Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Case No.: 4:22-cv-03290 (AHB)

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MARY LALIBERTE, et al.,

Plaintiffs,

-against-

QUANTA SERVICES, INC., et al.,

Defendants.

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November 1, 2024
3:03 p.m.
Central European Time

Remote Virtual Zoom Deposition of DONALD C. STONE taken by Defendants, pursuant to Notice, with the Witness located in Costa Bravo, Spain, before William Visconti, a Shorthand Reporter and Notary Public within and for the State of New York.

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ALSO PRESENT:

HOWARD BRODSKY, Videographer
CAROLYN CAMPBELL, In-house Quanta Services

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath with the same force and effect as if signed and sworn to before the Court.

THE VIDEOGRAPHER: Good morning. Here begins the video recorded virtual remote testimony of Donald C. Stone appearing from his location in Costa Bravo, Spain. This deposition is taken by the Defendants in the matter of Mary Laliberte, et al. Plaintiffs versus Quanta Services Inc., et al, Defendants. The case number 4:22-CV-03290 (AHB) in the United States District Court Southern District of Texas.

Today is Friday, November 1st, 2024. The time is approximately 3:03 p.m. central European standard time. My name is Howard Brodsky and I'm the legal video specialist today with Veritext Legal Solutions with offices located in Philadelphia, Pennsylvania. The court reporter is William Visconti in association with Veritext.

Counsel have stipulated that the court reporter shall enter all appearances for this proceeding into the stenographic court record and further stipulate and agree that the court reporter may take the

deponents oath remotely.
Will you court reporter please swear in the witness.

D O N A L D C. S T O N E,

having been first duly sworn by the Notary Public, was examined and testified as follows:

MR. ROBERTS: I'm ordering a copy of the transcript.

EXAMINATION CONDUCTED BY MS. ENGELMAN:

Q. Good afternoon, Mr. Stone. How are you today?
A. I'm fine. How about yourself?
Q. Good, thank you. My name is Keri Engelman and I represent Quanta Services in this matter. And you understand today that you're here to be deposed about the expert report that you submitted in this matter.
A. Correct.
Q. We have heard on the record that you are currently in Spain; is that correct?
A. That is correct.
Q. How long have you been in Spain?
A. Six months. We spend about 6

months in here and six months in Florida.

Q. I understand that you have been deposed before; is that correct?

A. That's correct.

Q. I won't spend a lot of time going through some preliminaries since you have been deposed, but I just want to be go through a couple of basics.

First of all, if you need a break today, please let me know. I'm happy to take one, my only sort of instruction around that would be if there is a question pending that you answer the question and then we could take that break. That being said, we are in kind of a good rhythm of taking a break every hour or hour and a half to stretch our legs. So that should be fine.

If you do not understand a question, of course ask me to clarify. If you do answer the question I'm going to assume that you understood it. Is that fair?

A. That's fair.

Q. You understand that you just took an oath and that means that you have an

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obligation to the court to tell the truth just as if you were before the judge in court. Do you understand that?

A. I do.

Q. Is there any reason today that you would not be able to testify truthfully?

A. No.

Q. What did you do, Mr. Stone, to prepare for today's deposition?

A. Just in the last day or two or since the beginning when I got involved in the case?

Q. I would like to take it step by step. But to the extent that you prepared for today's deposition since being aware that you would come in to be deposed, what do you do to prepare for today?

A. So I read through my report, of course. I read through some of the depositions again. I read the investment policy statement again. I looked at a few of the quarterly reports, investment reports again. Probably a few other documents as well that have been supplied by counsel.

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Q. When you say deposition transcripts, do you mean the entirety of the transcripts?

A. Well, I didn't look through the entirety of all the transcripts again at this point. But I did look up Laurie Latham in particular, I reread that one.

Q. You read Laurie Latham's deposition transcript?

A. I read her rebuttal report.

Q. When talking about deposition transcripts, do you remember which deponents the transcripts of which you read in preparation for today's deposition?

A. There were a bunch of names, that's for sure. There were several of the committee members that I looked at. I didn't read all of those transcripts in preparation in the last couple of days. I looked at them earlier. I think there were three committee members that I looked at. One was the associate legal counsel, one was the head of the committee or at least presumed head of the committee and the other would have been the

head of HR.

Q. Other than your counsel, did you speak to anyone in preparation for today's deposition?

A. No, I did not.

Q. Did you speak with counsel in preparation for today's deposition?

A. I did.

Q. Who did you speak with?

A. John Roberts and a couple of his associates yesterday for probably three, four hours.

Q. Other than that conversation with John and some associates yesterday, did you speak with counsel in preparation for today's deposition?

A. That was -- well, I think two days ago I spoke with him briefly and yesterday and that was the part that I would count as preparation for today.

Q. You mentioned that you re-reviewed Laurie Latham's report; is that right?

A. Correct.

Q. Did you review Laurie Latham's

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report when she served it in this matter or shortly thereafter or did you just review it within this past week?

A. I think just in this past week.

Q. When were you provided the report?

A. It has been some time ago. I don't remember the exact date.

Q. So you were provided it some time ago and you read it this week for the first time; is that right?

A. I think that is correct, yes.

Q. Have you read any other expert reports that have been submitted in this matter?

A. I have and it has been a little while since I have looked at those.

Q. Do you know if those were Plaintiffs' experts or Defendants' experts?

A. Those would have been Defendants.

Q. Are you aware if Plaintiffs have submitted any other expert reports other than your own in this matter?

A. I am.

Q. Do you know which experts or which

reports?

A. I did not read those. Since they weren't part of my opinion I did not read them.

Q. Do you know who the experts are?

A. I don't remember the names off the top of my head. And I don't know them through my industry contacts.

Q. You said you recall reading another of Defendants' expert reports other than Laurie Latham; is that correct?

A. Yes.

Q. Do you know when you read that?

A. No, I don't.

Q. Do you have any documents with you today in person, Mr. Stone?

A. I have a freshly printed out copy of my report, that's it.

Q. Sounds good. So when were you retained in this case?

A. I believe I want to say it was either May or June of this year, I believe. It's possible I was retained earlier, but we didn't get around to looking at documents or anything, so I don't have that -- I'd have to

look up when the agreement was signed. I don't have that off the top of my head.

Q. That's okay. Do you recall --

A. Can I -- I'm sorry interrupt you. I have a really obnoxious fly that keeps landing on my computer. Can we go off the record for two minutes and I'm gong to take of this.

MS. ENGELMAN: Sure. Let's go off the record for 5 to make sure that you take care of it.

THE VIDEOGRAPHER: Counsel, the time is 3:12 p.m. and we are off the record.

(Recess Taken.)

THE VIDEOGRAPHER: The time is 3:14 p.m. and we are on the record.

BY MS. ENGELMAN:

Q. Mr. Stone, before the kind of fly situation we were talking about when you were retained in this case. Do you recall if you reviewed any documents before you were retained in this case?

A. I would have reviewed the

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complaint prior to being retained.

Q. Anything else?

A. Probably that's the only document prior to being retained.

Q. Did you have any conversations with anyone in connection with prior to being retained in this case?

A. Yes, I had I think a couple of conversations with counsel prior to the retention.

Q. With anyone else prior to the retention?

A. No.

Q. Did anyone assist you in preparing your report?

A. I worked with legal counsel, but other than that, no.

Q. When you say legal counsel, you're referring to Miller Shah?

A. Yes, I am.

Q. What particular attorneys are you referring to?

A. Well, John in particular and both of his associates.

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Q. When you say you worked with legal counsel, did you actually draft every portion of your report?

A. I wrote the report. It's an iterative process. Counsel, as you probably are aware, that you have conversations at the beginning about kind of what the counsel's view of the case is. We go back and forth. We talk about particular salient areas where they have an opinion and they are wondering if my opinion kind of syncs up with theirs. We go back and forth on that. Sometimes it does and sometimes to doesn't. Then the process begins.

At that point they fed me a framework for the report itself and they also ended up filling in, of course, at the end putting all the cites and everything because they have this ability. I don't have that capability here.

Q. Of filling in the cites. Okay, so it is your testimony that you counsel provided you with a draft of the report and you --

A. We went back and forth creating drafts. They would have a, for lack of a

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better work, a backbone of what they wanted to do and I would populate it within some cases depending on which section there was quite a bit of information back and forth and they would go and give me some additional information. I would review that, I would edit it, I would send them an edited version back, back and forth. At the end of the day. It is my report. I stand by the words on it. I signed it. So I think that's the situation.

Q. Other than counsel at Miller Shah, did anyone else assist you in any way in the creation of the report?

A. No.

Q. To the best of your recollection, when is it that you first received a, quote/unquote, framework of the draft of the report from counsel?

A. Probably in June.

Q. Do you have any recollection of how many drafts you exchanged with counsel before the report was finalized?

A. I don't remember the exact number. All of these cases work in a very similar

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fashion. Sometimes it goes with three or four drafts, sometimes it goes up to six or seven drafts. It varies and I can't give you an exact number on this one. I have to go back and recreate that.

Q. Sitting here today do you think it was more than 3 or less than 3?

A. I would guess more.

Q. When you signed the report and we will take a look at it, let me just pull up the exact date here. July 31st of 2024, does that ring a bell?

A. Yeah.

Q. Do you have a recollection of when you actually finalized the report with counsel?

A. That would have been about that time.

Q. So can you approximate for me about how many hours you think you spent preparing the report?

A. You know, I really don't know. I submit monthly invoices, but I don't actually total anything up on these cases until after they are done. It's typical that it could be

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cases -- it depends on case, but they could be up to -- between 50 and 150 to 180 hours depending and, I don't know, how many hours in this case.

Q. When you say 50 to 100 hours, you're talking about the preparation of the report itself and not necessarily including preparation for deposition or are you combining?

A. I'm talking about the total.

Q. When you were exchanging drafts with Plaintiffs' counsel, were you also having conversations about those drafts via phone or Teams or Zoom or what have you?

A. Yes, typically via phone we would have a conversation. I don't know that it was every time, but there might be an e-mail exchange going on, there might be phone conversations, it just depended. But there would always be some kind of communication back and forth as these were being exchanged.

Q. Do you have any estimation or approximate of how much time you spent on the phone with counsel in the iterative process of preparing your report?

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A. I have no idea. I mean it would be purely a guess. It is not something that I track, so I could come up with a number but the number would be as good as any fiction that is out there. I just don't know.

Q. So you can't approximate whether --

A. I don't want to speculate on something that I can't even come close on.

Q. I don't want you speculate either. Without speculation, can you say it was more than 10 hours or less than 10 hours on the phone with counsel in the process of creating the report.

A. Creating the report, it would have been probably less than -- probably approaching 10 in the creation of the report, somewhere in that neighborhood. Again, that is a guess at this point.

Q. Okay. So I understand that you have served as an expert in prior cases; is that correct?

A. That's correct.

Q. Approximately how many cases, I

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know in your report you list the cases that you served as an expert for the last four years and we will cover those.

Do you have an approximation of how many case you have served as an expert in the last 10 years?

A. Let's see, the last ten years it actually would be the same number. There was a period of time between say 2004 and 2007 I served as an expert and then I did not serve as an expert again until 2021.

Q. Sorry, I missed the first date that you provided there.

A. 2004 to 2007.

Q. From 2004 to 2021 you did not provide any expert --

A. From 2007 to 2021.

Q. Understood. Did you provide expert services prior to 2007?

A. Yes, between 2004 and 2007.

Q. All right, for some reason I had a disconnect of the from 2004 to 2007 you provided expert services?

A. That's correct.

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Q. 2007 to 2021 you did not and resumed again in 2021?

A. Correct. I can explain that.

Q. I was going to ask first how many cases did you serve, if you can recall, as an expert between 2004 and 2007?

A. Either four or five.

Q. Do you recall the issues on which you opined in those cases?

A. I do.

Q. Can you just walk through the names of the cases and the issues, if you recall?

A. Well, I can give you the names of two of the cases. There are a couple of them which are -- I don't remember the names of the cases, but they actually were the most interesting of the group. They were a bit different.

Two of the cases were -- one was Kraft and my partner and I were working on that case for the Defendants. And then General Dynamics was the other one.

Q. Do you remember the issue that

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was -- that you opined in Kraft?

A. It had to do with recordkeeping fees and I believe in General Dynamics it had to do with recordkeeping fees, but also had to do with a -- with investments, because they had in-house -- they had an in-house investment firm that was spun off at a certain point, but it was -- it had been a captive internal organization, if you will, so there was some issues obviously around a fiduciary aspect of that.

Q. So for Kraft you said that you were an expert for the Defendant; is that correct?

A. Yes, that's correct. You actually probably will see because I was -- I wrote a big chunk of the report with my partner, which you will see her name on it, Jennifer, at that time it would have been Jennifer Marconi I believe or it could have been Flodin, F-l-o-d-i-n, which would have been her married name.

Q. When you say partner, what do you mean by that?

A. She was my business partner in a

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company that I founded in 2002.

Q. Were you opining on the prudence of the fiduciary process in that case?

A. I believe, I think that is probably a fair general broad explanation of it. I don't remember all of issues and exactly the details of it at this point. It has been quite a while.

Q. For General Dynamics were you an expert for the Plaintiffs or defense, if you recall?

A. For the defense.

Q. The same question, were you opining on the prudence of fiduciary process in that case?

A. Yes.

Q. Then are those the only two cases that you can recall providing an expert report between 2004 and 2007?

A. No. There were two other cases and they were -- they involved smaller plans than the two that we just talked about. One involved theft from a 401-K and the other one involved a defense of a -- there was a lack of

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fiduciary process until I was asked to -- if there was any reasonable defense in the case of a profit sharing plan where somebody -- an executive vice president of the firm had sued saying that there was imprudence because of lack of a fiduciary process and the investment selection monitoring.

Q. Do you recall what your opinion was in that case?

A. In the case of the, the last case that we just talked about, yeah, basically what I -- what we decided and legal counsel when they approached me, this would have been toward defense as well. They said there was no fiduciary process so we can't defend the case on that. Is there any other way that we can defend it and the answer that I came up with was how did the investments do.

Basically one person chose all the investments based on Money Magazine's recommendations each month and she knocked it out of the ballpark. We went to the judge and said no case, it would be a reasonable profit sharing plan to use 60 percent S&P 500, 40

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percent of the Ag on the bond side. And if the judge would accept that, which he did, then I created, basically created a table showing the performance.

So there was no -- basically the defense was there was no harm no foul. Even though there was no process, the guy who sued was better off because of the selections that she made.

Q. So your position in that case was essentially that these investments performed well and as a result the defense should succeed irrespective of no fiduciary process; is that correct?

A. Yeah, I didn't -- my report did not say there was no fiduciary process. That was counsel that took that position. My role was to come up with the defense in terms of the -- was there a harm and the answer was there was no harm. That was my narrow role to look at that.

Q. And that was, just so I'm clear, what is the name of that case?

A. I don't remember. It was a large --

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it was -- I don't remember. I don't even remember what the company did at this point. It was kind of a mid-size firm in the greater Chicago region. And besides that, I just don't remember anything about it at this stage. That was back in probably 2005.

Q. So any other cases that you remember focusing on in the 2004 to 2007 time period?

A. I mentioned there was one where there was theft from a 401-K.

Q. Anything else?

A. No, those are the only ones that I remember.

Q. From 2007 to 2021 you did not provide any expert services; is that correct?

A. That's correct. We decided that after the Kraft case we decided because of the nature of these cases, they kind of come and go and it's very difficult to run a business despite the fact that, obviously legal firms do it all the time, in terms of an investment consulting firm, which my firm was, it created more issues than it was worth going through to

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try to staff for it and have the time and so on to go through that kind of process.

So it was we just decided that we wouldn't do any more cases and we didn't the entire time that I was employed.

Q. Then in 2021 as of that time you were retired from the consulting service business; is that correct?

A. That's correct.

Q. So at that time you started to pick up cases, am I right?

A. That's correct. I was approached about a case, I believe that would have been Astellas which has since been settled and that is listed in the report. But I was approached about that case in the fall of '21 to see whether I would be interested in basically working with the Plaintiffs in that case and I think within about a month they also asked me whether I would work on the Shell case.

Q. When you say they, who are you referring.

A. This would have been Schlichter.

Q. Schlichter was Plaintiffs' counsel

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in the Astellas and the Harmon versus Shell Oil case; is that correct?

A. Yes.

Q. What was the issue in Astellas?

A. Astellas -- let me think for a moment. So Astellas had to do with OCIO or what is sometimes referred to as 338 services that were being provided by Aon as a proprietary product. That was the primary issue involved in that case.

Q. What is it that you opined on precisely?

A. Basically I was saying that that was -- that their role in recommending their own funds was conflicted.

Q. What was the issue in the Shell Oil Company case?

A. Shell had several issues and that is still an ongoing case at this point. One was recordkeeping fees. The second was the tier of investments of approximately 300 investment choices which were not monitored by the investment committee. And then the third issue was fees that were being generated by

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managed accounts that -- and that tied into the recordkeeping fee because it had to do with the total revenue that was being received by the record keeper at the end of the day.

Q. Did you opine on the fiduciary process as it related to all three of those particular issues or something else?

A. No, all three.

Q. But was your report limited to the fiduciary process issue?

A. As oppose to -- well, I didn't -- so I dealt with the fee issues and the fiduciary process issues. I did not opine -- if I remember correctly, I don't think I opined on the -- I'm not sure exactly about the prudence of any particular -- there were 300 investments that nobody was monitoring and I did make some commentary about some of those funds being duplicative and being the same fund was in the main menu and outside of the main fund it was a more expensive version. So I may have opined about that. I don't think I was -- I don't think I opined about the returns of any particular fund or any particular groups of

funds.

Q. We could introduce the exhibit, but we will probably do it later. Do you have your report in front of you, I'm looking at paragraph 15, which just has a list here of the cases that you set forth as providing expert testimony. I'm just running through those.

I'm looking, Mr. Stone, at paragraph 15 of your report, just to refresh your recollection of the other cases in which you listed that you provided expert testimony. So we talked about Astellas. You listed that as Wachala versus Astellas. Do you know, was it actually Miller versus Astellas? Do you have a recollection of that?

A. I don't have a recollection that it was Miller, no.

Q. So then the next case listed is Mills versus Molina Healthcare; is that right?

A. Yes.

Q. Did you provide testimony for Plaintiffs or defense?

A. For Plaintiffs.

Q. Do you remember who counsel was?

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A. That would have been Schlichter as well.

Q. What was the issue in that case?

A. That had to do with proprietary quasi custom target day funds.

Q. What is the issue that you opined on?

A. Well, that I felt that there was a conflict between -- well, that the advisor was offering their own funds as opposed to having an unconflicted view to go out and search for other funds for their client. And there were, even though the overall -- the issue ended up turning on whether in an NFP got -- if they received extra benefit because people went into their own funds. Which basically are a Wrap or Blackrock funds. And the answer is they got paid the same either way as a 338. But some of their staff actually got extra compensation because of the recommendation to go into those proprietary funds.

Q. Am I correct that you provided trial testimony in that case?

A. That is correct.

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Q. Is that the only case in which you provided trial testimony to date?

A. It is.

Q. Snyder versus UnitedHealth Group is the next case listed. Did you provide an expert opinion for the plaintiff or the defense?

A. For the Plaintiffs.

Q. Who was counsel on that case?

A. I'm trying to remember who counsel was and I could look it up, but off the top of my head it is not coming to me.

Q. No problem.

A. It is going to be the same as Natixis, if I remember correctly. No, I'm sorry UnitedHealth is different. I'm getting two law firms mixed up. So I don't remember the law firm exactly, so I'm going to beg off giving you the answer there unless you want me to look it up.

Q. That's okay, no. Do you recall the issue in that case?

A. I do. UnitedHealth, and this is an ongoing case, UnitedHealth was utilizing

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Wells Fargo's target date funds and had been for many years. They were a -- they did a lot of business with Wells Fargo. And the contention by Plaintiffs was that the firm, UnitedHealth, was conflicted and that they did not act in participants' best interest in choosing and retaining and not removing the Wells Fargo funds.

Q. Did you provide an opinion about the fiduciary process or was it just an issue of conflict?

A. About fiduciary process because they went through an RFP process and whatever. I definitely opined on the process as well as the conflict of interest.

Q. Did you make any conclusions about the fiduciary process in that case?

A. I thought the fiduciary process was flawed.

Q. Do you remember why?

A. I'm trying to think how much of this is public at this particular point and how much is privileged. So I'm having a little bit of heartburn over that.

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Q. We could move on.

A. Thank you.

Q. The next case is Waldner versus -- I don't know if I'm going to mess this up.

A. Natixis.

Q. Natixis. Do you recall if you provided an expert opinion for Plaintiffs or defense in that case?

A. For Plaintiffs.

Q. Do you remember who counsel was in this case?

A. No. I don't keep all of these law firms in my head.

Q. That's okay.

A. I'm supposed to be quasi retired.

Q. It seems like you have been busy. So do you remember what the issue was in the Waldner case?

A. Yes, Natixis is a very large global investment management firm. Basically Natixis is a, for lack of a better term, is in parlance within the business world would be, it's a roll up of investment managers. They own a number of investment management firms

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that operate under the original names, if you will, when they were required.

Natixis put almost all, not totally, almost all Natixis funds into their 401-K. So the issue had to do with fiduciary process of the selection, monitoring and retention of some of those funds, not all of them, but some of those funds.

Q. Okay, again, were you providing an opinion on the fiduciary process in the selection, monitoring and retention of those funds?

A. Yes.

Q. Were you deposed in this case?

A. I was deposed in that case, yes.

Q. And then --

A. That case is still open as well.

Q. Okay. The Williams versus Centerra case on the next page of your report. Did you provide an opinion for the Plaintiff or the defense?

A. That would have been the Plaintiffs.

Q. Do you recall who counsel was?

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A. I do. In that case it was Schlichter.

Q. What was the issue in that case to the best of your recollection?

A. So the issue there had to do with, again, target date funds.

Q. Do you remember what the particular issue was around the target date funds?

A. I'm not remembering the details of it at the moment.

Q. Do you remember which target date funds were at issue?

A. I believe it was the NFP Funds again, if I remember correctly.

Q. NFP Funds?

A. Yes, that's not the name. The funds themselves go under -- let me think a second. I believe they use Life Path which is similar to Blackrock. The names are similar to what Blackrock uses for those. I might confuse those two.

Q. Were you forming an opinion as to the fiduciary process in retaining or selecting

or retaining and/or monitoring those funds or something different?

A. I believe so, yes.

Q. Is that case still ongoing?

A. That one has been settled.

Q. Do you remember what your opinion was in that case with respect to the fiduciary process of selecting or changing the target date funds?

A. I don't recall the details at the moment. Sometimes these things start to become a little bit of a blur.

Q. Understood. So the last one is the Ahmed versus Liberty Mutual Group case. Did you provide expert testimony for Plaintiff or defense in this case?

A. For Plaintiffs.

Q. Do you remember who the counsel was?

A. It was the same as -- let's see, Liberty Mutual is the same as Natixis, I believe it was the same counsel.

Q. Do you remember what the issue was in that case?

A. Again, it was a target date issue and I'm not remembering the details of it at the moment.

Q. Do you remember what target date funds were at issue in that case?

A. Let me think. I should remember that. No, I'm just not remembering at the moment.

Q. Do you remember if you provided an opinion as to the fiduciary process with respect to selecting and/or retaining the target date funds at issue in that case or something different?

A. No, I think it would be the fiduciary process.

Q. So in any of these cases, do you have a recollection that you worked with Miller Shah?

A. I did not work with Miller Shah on any of those cases, no.

Q. So how is it that you -- do you know how it is that Miller Shah came to know your name and contact you?

A. I believe they -- I think they

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found me like some of the other found me which is just on the internet. There is a lot out there under my name and everything. Things that I have written over the years. Some of cases, obviously the information is out there. So I think that is the way that -- I believe that's the way -- in fact I'm sure that is way they found me.

Q. So do you have any sense of how much you've earned since 2021 in connection where expert services?

A. Well, I don't know the exact number. I don't necessarily want to get into my total compensation, but certainly from the cases that we have listed here, it's well north of half a million dollars.

Q. Do you have any other source of income other than providing expert services at this time or since 2021?

A. Yeah, I do.

Q. I don't want to know the income but what are the sources of income?

A. Well, at this point social security. So mine and my wife's and I also

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have a number of investment accounts. I have also an IRA which is a rollover from a 401-K. I have taken my required minimum distribution every year. RMD. I have income off of bonds and stocks and private equity investments as well.

Q. You have been retired since, is it 2019; is that right?

A. It was actually May 19, 2019.

Q. So let's --

MS. ENGELMAN: Maria, can we mark as Exhibit 1 Mr. Stone's report please.

(Exhibit 1 for identification, Expert Report of Donald C. Stone.)

Q. Do you have access, Mr. Stone, to Exhibit Share? Do you know how to work that?

A. I do have Exhibit Share. I'm opening it as we speak. Can I go off the hard copy of my report when we talk about my report?

Q. That is totally fine with me. I just want it marked for the record.

MS. ENGELMAN: Let's mark it and Mr. Stone and I will work off the hard copy and proceed.

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Q. Mr. Stone if you turn to the back end of your report which is Exhibit B, materials considered.

A. Yes, let me get to it.

Q. The first two pages are various articles, but I want to turn your attention to the litigation documents.

A. Okay.

Q. First of all, does this report contain the totality of your opinion in this case?

A. It does.

Q. The litigation documents that are listed here, are these all of the documents that you relied on in forming your opinion in this case?

A. Yes.

Q. Did you personally review every single document that is listed in Exhibit B here?

A. I did.

Q. Did you review them in their totality?

A. I would say virtually in their

totality. For example, when we talk about quarterly investment reports and they are 150, 200 pages long, I didn't review every single page, every single quarter. I think that is a fair assumption.

Q. Did counsel provide you documents to review in order to create your opinion?

A. Yes, they did.

Q. Did you request certain documents of counsel?

A. Yes, we had conversations, I don't recall specific requests that I made that they didn't provide. I know we had some back and forth. I had some questions and what have you, so that may have led to certain documents being included in the documents that they provided. But I don't recall off the top of my head.

As I said, it's a very iterative process. I had questions from the get-go and that's kind of the normal way these things work.

Q. So I guess what I'm trying to get at, the list on this page, is that all of the documents that you received in connection with

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this litigation or is it a subset of what you received and reviewed?

A. Well, first of all, the litigation documents go on for several pages. I'm just making sure that we are on the same thing.

Q. Yes.

A. So there is four pages here that are not part of what I wrote and all of that good stuff. Yes, this is to the best of my recollection this is all of the documents that I looked at.

Q. Did you type up these three pages or did counsel?

A. They would have typed this up.

Q. Did you review it before it was submitted to make sure it accurately reflected the documents that you relied on in forming your opinion?

A. I reviewed -- I always do a spot check, okay, when there is -- when you have a like a Bates number or whatever that somebody put down, I spot check those. I don't go through every single document and look at it again. But I do spot checks to make sure it is

accurate, that I have seen it, that it is something that I remember and I didn't find anything unboard there.

Q. Do you recall if you requested certain categories of documents to review in connection with this case?

A. You know, again, that kind of goes into the blur of the conversations that we had. Obviously all categories that I wanted to see I did see in this case and everything. So I saw -- I mean the things that I would expect counsel to provide, like IPS, quarterly investment reports, those kind of normal documents I would expect to see those there.

So I don't know -- I don't recall something that it was like, okay, I haven't seen this, I haven't seen that, can you provide this particular document. But that would have been part of that conversation that went on on an ongoing basis.

Q. Understood. At the back end of this, the last page is depositions of the committee members as well as the consultant, Rich Eagar, do you see that?

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A. I do.

Q. We talked earlier about your review of the transcripts in preparation for the deposition. But in connection with preparing your report, did you personally review each of those deposition transcripts in their entirety?

A. So I looked at all of them. I can't say that I read every word -- it is fair to say that I read all of them, but I sometimes speed read through things where it is areas that I don't think are as relevant to the issue at hand. So sometimes some of the background on somebody. I don't necessarily spend a lot of time looking at every single job that each person has had. I want to get to the kind of meat of the issue.

I don't look -- I don't spend a lot of time on the parts that you and I went through a few minutes ago where you say if I don't understand something I ask again. All of the preliminary stuff that shows up in the depositions and everything.

I try to go to the meat of what

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I'm looking for in reading through all of those.

Q. Are there any other areas, I mean you said earlier that is not relevant to your opinion. Any there other areas other than job or background that you that you would have support of sped read through?

A. Not that I recall, no.

Q. What do you consider the meat of the issue?

A. I want to say how they talk about -- how they viewed their role on the committee. How they thought about how decisions were made by the committee. How they thought about the advisor. What they thought about the fiduciary training. Kind of all of the critical issues that you would expect that each one of them would have been asked about and would have had a slightly different take on.

I want to see how they thought about their role in the committee. How they understood the decision-making process. Again, what their comfort level was with investments. There is a -- I come up with a very long

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laundry list, but these are the kind of things that you start immediately trying to go to to understand as opposed to I went to college at XYZ.

Q. Would you say that you read these transcripts one time through in preparation for your report or more than one?

A. I spent time going back on a couple of them more than I did others. But so I looked at Carolyn Campbell, I went back a couple times to refresh myself on certain things. I did the same thing on Jensen and Riddle. Not so much on Rupp and Grindstaff.

Q. Why is that?

A. Because I didn't see anything that -- I didn't see information that I felt like I needed to go back and look at again.

I guess when I was looking through my report and I was looking at the rebuttal report, some of the information from those particular people did not come up as much. Now Rich Eagar, that is different, he came up a lot. Of course he wasn't on the committee, he was the advisor.

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Q. We'll get to it, but there is a fair number of transcripts or deposition cites that are footnoted throughout your report; is that correct?

A. Correct.

Q. Would you personally have chosen which cites to include in your report?

A. I would kind of reverse that. It was not me choosing the cite so much as the reference point to quote. Because I didn't know exactly what the cite was in some cases. But I had information that is a footnote and so the information that is the footnote, that would be what I would be focused on as opposed to coming up with the legal information that goes with the cite.

Q. So okay, I guess maybe we are talking about something -- maybe we are miscommunicating here.

When I say citation I mean the sort of information from the transcript, the substantive information from the transcript.

Did you personally choose which substantive information you wanted to include

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from the transcripts for your report?

A. Yes, I mean I read through all of this. Like I said, this was -- counsel might bring up a particular topic or a particular -- what a particular individual said and we would talk about it and sometimes it might be something I would say that is kind of -- that doesn't resonate, I don't know that that is something that I find to be a problem or whatever. Or maybe I would say okay, well that sounds very relevant and everything, so let's talk about that a little bit. It's a very iterative process in that regard.

I didn't go through a transcript and pick out six different quotes I want to use, for example, from Kip Rupp, okay. I could have done it that way because I read through it and I did confirm all of those, but that is not the way that these typically develop.

Q. What do you mean you did confirm all of those?

A. I would go back and look up the cites and make sure that they were correct. I would look at footnotes and make sure they were

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correct.

Q. You did do that for all the cites prior to submitting your report?

A. Yes.

Q. Let's talk a little bit about your background. So I kind of want to start a little bit in reverse order. Prior to your founding of Plan Sponsor Advisors in 2002, prior to that, did you serve as a consultant in any way to fiduciary committees in a 321 or 338 capacity?

A. I was on a committee, but I was the head of the trust company, so I can't say that I was a 321. I was running the trust company.

Q. So when you say you were on a committee, you were a member of a fiduciary committee for a 401-K plan for the trust?

A. Yes, that's correct. For Key Bank. Key Corp. would have been the holding company.

Q. Did you have a specific role on the committee?

A. Well, I ran the institutional

trust division.

Q. You just went out for me.

A. Can you hear me now.

MS. ENGELMAN: I'm not hearing you. Can we go off the record.

THE VIDEOGRAPHER: Counsel, the time is 4:04 p.m. and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 4:16 p.m. and we are on the record.

BY MS. ENGELMAN:

Q. Hi, Mr. Stone, sorry we had a technical hiccup. I think before we went off the record you were talking about the fact that you served on a 401-K fiduciary committee at Key Bank; is that right?

A. That is correct.

Q. Did you have a particular role on that committee, Mr. Stone?

A. I don't recall if I -- I was not the chair of that committee. So I don't recall if I had a role other than being on the committee.

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Q. Do you remember how many people were on that committee?

A. Not exactly, but I would say there were probably five or six.

Q. Did that committee offer investment options?

A. No, we were the ones who were -- that committee had the role of making options available for the 401-K plan for key Corp. and monitoring those and changing them out as necessary. Some other -- we had some other responsibilities in regard to the overall institution.

Q. So you were responsible as a fiduciary to make selections for investment options; is that right?

A. Yeah, that was among the roles, yes.

Q. The same for monitoring those investment options that were selected?

A. Yes.

Q. Do you recall, did you consider that to be a committee operating in a prudent way?

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A. Yeah, I thought it was a very prudent committee. It was a very -- it was laid out well. Everybody understood what their role was. Everybody was educated about what we were supposed to be doing when we were there. I thought it was a good prudent committee.

Q. Was there an outside investment consultant?

A. No.

Q. Do you know why that was the case?

A. Well, keep in mind this is in the mid-1990s, that would have been less prevalent. And we were a rather sizable money manager and so it just was not -- it was not something that I think was felt that was necessary at that particular time.

Q. In terms of selecting investment options, did that committee have any particular process in place for the criteria it evaluated when selecting investment options?

A. I don't remember the details at this point. I mean, again, this is in the mid-1990s, so a number of the options that were offered were proprietary options, not all of them, but

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a number of them were and that was very typical at that time. I don't recall the details of the process.

Q. Do you recall any details about what criteria the committee considered when monitoring the performance of those options?

A. No, not at this point.

Q. So aside from that role at Key Bank prior to PSA, did you otherwise serve on any other 401-K or 403-B fiduciary committees or serve as an investment consultant in a 321 or 338 committee?

A. No.

Q. Looking to 2002, you say in paragraph 9 of your report that you founded Plan Sponsors Advisors, which we'll call PSA. Was that with the partner that you mentioned earlier?

A. Initially I did not have a partner. So she became part of that organization officially in some time in 2004.

Q. During the entirety of between 2002 and 2014 were you the president and managing partner of PSA?

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A. We changed titles a couple of times. I think I dropped the title of president at some point. At a certain point we went to founding member and that kind of thing. I don't recall the details at the moment.

Q. That firm provided consulting services to fiduciary committees; is that correct?

A. That's correct. I don't think it is actually in my CV there but there was a -- I also owned a second corporation that provided similar services and I will explain the reason behind that.

When I initially I had -- I picked up some clients and I had them operating under an entity called Third Coast Advisors. At the time that I brought my partner onboard she had a separate business that was high net worth individuals. We couldn't agree on a valuation between the two businesses, so we agreed to carve them out separately and leave them as independent as we built -- continued to build Plan Sponsor Advisors.

So that ran in parallel the

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entirety time until I sold both of those corporations to Pavilion in 2014.

Q. So just so I'm clear, was Third Coast Advisors providing the services related to high net worth individuals?

A. No, it was not high net worth individuals. It was to 401-K plans as a 321 fiduciary.

Q. So can you just explain the difference between the services that PSA was providing and the services that Third Coast Advisors was providing? I'm not sure that I'm understanding the difference.

A. There was no difference in the services provided. It had to do with the ownership. So Third Coast I owned 100 percent of, my partner had the high net worth business, we were going to roll those into Plan Sponsor Advisor but we couldn't agree upon on a valuation for those businesses, so we decided to carve them out, keep them separate.

So mine ran in parallel, Third Coast ran in parallel. I didn't add any new clients to that. It was kind of frozen at that

point with the existing clients it had. And it ran until I sold that as well as Plan Sponsor Advisors to Pavilion in 2014 and then her high net business basically evaporated over time.

Q. You owned 100 percent of Third Coast Advisors. Did you own a hundred percent of PSA?

A. I did not own hundred percent PSA at that point. There was a split that we had and a complicated split, I don't want to go into the legal aspect of that, but I was majority owner.

Q. That's fine. So they were essentially providing the same services to the same clients or different clients?

A. Different clients.

Q. So let's start with PSA. For both Third Coast and PSA were you providing both 321 and 338 services?

A. No, just 321.

Q. Just 321 for both, okay. During the entirety of the time period between June, 2002 and June 2014 -- I'm sorry, between 2002 and 2014?

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A. That's correct.

Q. How many, approximately, how many clients did Plan Sponsor Advisors serve?

A. Probably over that timeframe, around 60.

Q. What about Third Coast Advisors?

A. Third Coast was very small. I think I had four clients in that.

Q. During the entirety of the 2002 to 2014 time period?

A. Yes, because they were all signed up in 2002 and so I didn't add anything to that entity. I just kept those clients all those years.

Q. Did Plan Sponsor Advisors have employees or independent contractors or consultants that worked there?

A. We had employees. We sometimes had independent contractors who did work for us as well.

Q. How many employees or consultants did Plan Sponsor Advisors have?

A. Obviously it varied over time. I would say we were typically in the neighbor of

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12 employees.

Q. Those employees were working as 321 advisors to clients of PSA?

A. Not all of them. Some of them were in research. We had one administrative it person. So there were several in the research area exclusively. There were a couple who were servicing clients and also in research. That would have been 321s.

Q. What about for Third Coast, were there any employees or individuals --

A. No, I was the sole employee.

Q. For Third Coast you personally served as the 321 advisor to those clients?

A. Yes.

Q. Do you know the names of those clients?

A. No, I don't remember them at this point and they would be confidential.

Q. For PSA did you personally serve in a 321 capacity to any clients?

A. I did.

Q. Approximately how many clients?

A. Well, I helped bring in all of

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those clients -- probably almost all of those clients. So I would have been in a 321 capacity for some period of time for probably all of those. But what typically happened is that after going through the process of bringing -- onboarding the clients, at a certain point obviously I couldn't service them all, the same thing with my partner. So we would hand them off to someone else once we onboarded them and got them kind of settled in to our reporting process.

Q. How is it that you went about bringing in clients? What was that process?

A. Well, typically I would say for Plan Sponsor Advisors it was almost totally referral.

Q. Referral by whom?

A. Almost all by ERISA counsel. Not totally, but almost all by ERISA counsel. And sometimes there would be an RFP process involved that counsel would say my client is going to go through an RFP process and we would like you to be in the mix.

Q. Do you recall for any of those RFP

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processes, do you recall whether or not you were submitting an RFP to be the kind of first consultant to provide services to a plan or to replace an existing consultant?

A. It could have been either one.

Q. Do you have any specific recollection of whether or not you submitted an RFP in connection with replacing an existing consultant?

A. We did, yeah. I don't remember who the existing consultant was or who the client was. I mean that was not uncommon, I guess is what I'm saying.

Q. With respect to the individuals who worked under you or worked for PSA as a 321 consultant, do you feel those were prudent advisors?

A. Yes.

Q. Did you oversee their work to ensure they were fulfilling their obligation as 321 consultants?

A. Absolutely.

Q. You say in paragraph 9 that during your tenure you advised on over $65 billion in

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retirement assets; is that right?

A. That's correct.

Q. Over what period are you talking about there?

A. That is during the 2002/2014 period.

Q. In any given year do you know approximately how many assets PSA provided services for?

A. That's a very difficult question. Are you asking on a retainer basis? That would make this a little be easier. We had clients who were project clients in some cases. That's part of that 65 billion. And then of course we had retainer clients who we provided ongoing services to and were in that 321 capacity that entire time.

Q. So on the project basis, those were not -- those were specific projects, you weren't the consistent 321 advisor to those particular plans?

A. We might be 321 -- depending on what the project was, we might or might not be a fiduciary to that particular client.

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So for ongoing retainer work when we sold the business, we had a little over $23 billion at that point.

Q. Do you know approximately how many clients that covered?

A. That was about 50 clients.

Q. Do you know the range of the size of clients that you provided 321 services to? You said in your report both small and large?

A. Yes. So I would say at the time that -- at the time that we sold the business in 2014 the smallest client would have been probably in the 5 million or so, 5, $6 million range. And that would have been one of the kind, I will call them legacy clients. One of our first clients. We had a very high retention rate.

I think the average client size was, and this is going to be a guesstimate, I did calculate it at one point. But the average client size was probably in the 4 to 500 million range and a number of the clients were north of a billion.

Q. How many clients would you say

were north of a billion?

A. Probably of that 50, probably 10 of them. Probably another 20, 25 would have been north of a 100 million.

Q. Would the asset size of the client dictate the -- effect at all the quality of services that you provided as a 321 consultant?

A. No. We looked to provide the same -- first of all, the same type of service and there might be certain services that we didn't provide to or would have actually -- I should back up and say, would have provided as an add-on service for certain clients because they didn't necessarily need some of those service or didn't need them all the time.

In terms of the normal, you know, create the IPS, arise the IPS, provide investment selection, monitoring, removal, basically we did the same thing for every client.

Q. For Third Coast Advisors, what was the range of assets for those four plans, if you recall?

A. I don't recall exactly, but they

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were small. They would have been on the smaller end. So let's say 5 million or whatever. Because those were the first clients I brought in the door when I started in 2002 and those were -- two of those were within the first two months. They were not the typical client that we went after after that first year.

Q. Between 2002 and 2014 did your -- as a 321 advisor at PSA and I guess Third Coast, did your reporting capabilities change in terms of the sort of metrics that you can provide clients on their investments?

A. I don't think the -- the basic metrics did not change. We had a pretty robust reporting system early on that we invested in. So the -- and the metrics -- I'll make a distinction here because I think I understand where you're going.

The metrics that the industry reports on have been around now for a good 20, 30 years or so. And they are pretty much the same metrics. If you go to 50 different companies you're going to get largely the same

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metrics.

What can be different is whether or not, and some companies use a scoring system and some of the scoring systems could get rather complicated. Some don't use a scoring system. So there is a -- I said that is where the big difference is.

Everybody is going to report on the returns of the fund. They are going to report on the risk adjusted returns of the funds, the expense ratios, the Sharpe ratio, the upside/downside capture, so on and so forth. There is a whole range of things that come into being well after ERISA, but that are used by everybody to try to evaluate investments these days. And that is pretty standardized.

Q. Is it your view that it is appropriate for committees to evaluate all of those metrics that are recorded in their fiduciary capacity?

A. You know, I guess the keyword is all. I think there are metrics that are looked at by consultants that are probably not well

understood by many clients. And you don't show every metric that you could possibly look at in a report. I mean it gets to be very, very cluttered.

So I would say typically you look at the more salient ones that are going to -- that are used in your report. Some people prefer the Information Ratio versus the Sharpe ratio, some people the Sharpe ratio versus the Information Ratio.

There are other ratios, the Sortino ratio that is not used very much. But it is all out there and all available on the same -- there are about three investment platforms that exist out there that gather all of this data that everybody uses to report on.

Q. So I want to break down a couple of things that you said. The metrics that you think committees would not understand, what are those?

A. There are metrics, probably that's not the right word. They might not be familiar with them. The Sortino ratio is one that I can't remember how it is calculated at the

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moment. But there are a number of metrics around the whole risk adjusted topic. And generally the Information Ratio and the Sharpe ratio are the two that are most commonly used by basically everybody in the industry that I know of. So those tell a very similar story and everything.

I don't think -- I guess what I'm saying is, there are a lot of other things that if you're a CFA you will be aware of 20 different ratios that aren't necessarily in anybody's reporting, and if they would be, I'm not sure why they would be because they don't add necessarily a lot of additional value.

Q. In terms of your view as to what should be presented to a committee for its review in terms of performance, what metrics do you believe should be presented or did you present to the committee in which you served as a 321 advisor?

A. I'm probably not going to remember every single thing that we -- and we're talking quantitative at the moment. We will probably get into qualitative as well.

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But the quantitative metrics, the kind of things that we would report on on a quarterly basis would be obviously raw performance, performance against a benchmark, perhaps against a couple of benchmarks depending on the asset class, depending on primarily the asset class and whatever we, you know, whatever the investment manager used as their preferred benchmark would show that. We would also use a best fit benchmark which might be the same thing, might be something different.

We would do calculation of the risk adjusted returns and we would use both sharp and Information Ratio for that. We would report on actual assets in the product, in the investment product. We would report on the tenure of the manager or managers. We would report typically on the upside/downside capture. It would be R squared, expense ratio reports.

THE COURT REPORTER: Hold on a second, he froze.

THE VIDEOGRAPHER: He froze. Let's

go off. The time is 4:41 and we are off the record.

(Recess Taken.)

THE VIDEOGRAPHER: The time is 4:45 p.m. and we are on the record.

MS. ENGELMAN: Bill can I call on you to say the last thing that you got of Mr. Stone's testimony.

(Requested portion of record read.)

BY MS. ENGELMAN:

Q. Mr. Stone, you were talking about the metrics that you would report on as a 321 advisor for clients. Is there anything else?

A. I'm sure there are a number of -- there are few other metrics, those are probably the most salient ones that would, I think, be of interest to clients or committees on a quarterly basis.

There would be for -- obviously when we're reporting on target date funds we get into some other additional things that we would report on periodically if certain things changed or what have you. But you know that -- maybe I didn't -- one thing that I may not have

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captured is we would capture comparison to peers. I don't believe I said that one and that is a very important one.

Those are the principal ones that are coming to mind at the moment.

Q. You said with respect -- I didn't mean to interrupt you. Were you done?

A. I was done, thank you.

Q. With respect to target date funds, you said there were some other metrics. What would those be?

A. In target date they are obviously going to look at the glide path, you're going to look at any changes in the glide path over time. You're going to look at changes in the asset make up of what makes up the target date funds. In other words the basic -- obviously you have the glide path, quote/unquote, but what makes that up in terms of the asset allocation might change over time. So that is not the thing that we would report on every quarter. It is one of those things that comes up as necessary.

Q. Anything else with respect to

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target date funds?

A. Nothing that I'm remembering off the top of my head right now.

Q. I think you said that you would periodically provide additional information about target date funds to your client. Did I hear that correctly?

A. Yes, something that we did and obviously was done in this case and very typical in the industry is to periodically do a comparison or what some people call a deep dive to compare to various metrics against other target date series that are out there as part of the ongoing education of client committees.

Q. What metrics would typically be in the presentations that you would provide to your clients?

A. Well what you'd be looking at, and this was not specific to a client, it was for all clients. You would provide information on assets, the asset -- maybe on the asset flows both in and out, you would provide information on the comparisons of the glide path, comparisons of returns, comparisons of expense

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ratios. You would look at things like comparison of whether there are to or through. And I think most importantly you'd look at their -- for this part you would look at what is their equity mix at retirement date. Assumed retirement date of 65. I do would look at -- you know, you just look at a number -- provide all of that information probably -- again, I'm not going to remember it all off the top of my head.

You're basically looking to provide a grounding for the committee on a comparison of various products that are out there which might lead to a conversation as to whether a further evaluation of the existing product was wanted or not.

Q. How often would you provide these types of reports to your clients?

A. Typically annually.

Q. Is there any client that you can think of that offered a target date fund that you did not provide this to at least annually?

A. I can't think of one or a reason why I wouldn't do that.

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Q. What was the purpose of providing these to your clients annually?

A. Well, again, typically for most clients the target date funds over a period of time became the -- because they were typically the QDIA, they would become the largest asset within the plan. So I think additional scrutiny was certainly warranted. And again, that was part of the general education of the committee that we would provide on an ongoing basis.

On a quarterly basis you wouldn't provide what I just said because nothing would change on a quarterly basis. It wouldn't make a lot of sense to do that.

Obviously if there was a selection of a target date, then there would be additional elements that you would look at that would be specific to that particular plan in looking at making -- in choosing a target date fund. And sometimes you would go back and rerun that information specific to that plan on a periodic basis. Not necessarily annually, but from time to time as appropriate.

Q. I want to unpack just a few things

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that said. You went through the quantitative criteria, generally speaking, that you would provide to your client on a quarterly basis; is that right?

A. Yes.

Q. And is it that you provided that information so that the committee would review and consider all of that information in making its decision with respect to the investment options offered in the plan?

A. Yes.

MR. ROBERTS: Objection to the form.

Q. Is it your experience that the committee in which you served as a 321 consultant actually considered those metrics in making decisions with respect to the investment options offered in the plan?

MR. ROBERTS: Objection to the form.

A. Yeah, they did do that because we spent a lot of time educating them about the purpose of each of those and obviously some of them were kind of self-explanatory. But a number of them were things that a typical

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person that comes on to a committee may or may not be familiar with. We would spend time as part of that fiduciary education process educating them about the various economic terms and economic metrics and educating them about the context of what was going on in the world as their investments, what was going on with them and what was going on in the world that might be having an impact on them.

So the key was to get an educated group that could actually be conversant. I think there is real concern in the industry in terms of people throw all of these metrics out and come in with fancy reports that got an awful lot of night colors and everything and my experience is, unless you really work hard at it, half the people on these committees don't have a clue as to what you're talking about.

So it is very, very important, because they don't have the background in investments, so you really need to educate them, otherwise you're showing them a lot of pretty charts and saying you should do this and do that. And it is difficult for them to

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deliberate about that.

We spent a lot time on that education process and it's a never ending kind of process, but it is really critical to good decision-making by a committee.

Q. It is critical and you spent the time educating your committees on these various metrics that you mentioned, the quantitative metrics, because it was your expectation that they considered each of them?

A. They did need to consider each of them, absolutely, and to be able to be conversant in them and ask questions about them. There would be sometimes very lively conversations that would go on with these clients and everything because they did take it seriously.

Q. With respect to the target date annual reports that you provided, you mentioned that you provided those to all of your clients that offer target date funds; is that right?

A. Yes.

Q. Would you tailor those reports to any specific plan?

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A. No, as I mentioned, there was a standardized report that all of them received. The only thing that was tailored to them, obviously it covered -- made sure that it covered the target date fund that they offered and a range of other target date funds that were out there. So typically it would be the same report that would go to all clients.

There were things that were customized to a particular client relative to the target date that I alluded to that were critical to the selection process. And would be important to the monitoring process if there were in fact questions about whether the fund that they had, the target date series they had was the appropriate one. But that is not something that you would run all the time.

Q. That's helpful, thank you.

So you said you mentioned the selection of a target date fund and some metrics that would be important to that process; is that right?

A. Absolutely, yes.

Q. So in your view what are the

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important aspect of a committee's selection of a target date fund?

A. Well, I think what is critical in the selection of a target date fund is you're going to talk about the objectives that the committee has, what their expectations are for that target date fund. You're going to spend time talking about any particular philosophy or opinions that the committee already has formed and has as you go into that process to understand where they are coming from. And those could sometimes bring up issues that you want to address in that selection process.

You're also going to look at plan demographics or what some people refer to as a fit analysis. The plan demographics are critical to the selection process.

Q. Why is that?

A. Well, because there is not one target date series that is the choice for everybody out there. Plans have, as I referred to a moment ago, sometimes they may have different objectives or different philosophies, but most critically all plans have different

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demographic information and the success or failure of a particular target date series really rests on those particular elements of that plan.

So what may work very well and be the right choice for plan A may not be the right choice for plan B and could in fact be imprudent. So it is not just a, let's go out and find a well known target date series or whatever. There are really critical elements to look at. I will give you an example.

Things you want to look at are average balances, average age of participants, you want to look at the contribution rates of participants, you want to look at the contribution rates of the company, you want to look at are there supplemental plans. There are a handful of those -- those are some of most important. There are others. I'm not going to try to list every demographic element at the moment.

All of those go into play because what you then want to do is to make a selection is to project out what is the probability of this particular -- of any particular target

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date series working for that plan. By working, I would say getting the largest percentage of participants to a successful retirement.

In the industry, generally speaking, there is general agreement that somewhere between 80, roughly 80 percent, some people are a little less than that and some people a little bit more than that, but let's say 80 percent is probably the vast majority would agree is the income percentage that you're looking to replace through the plan, through other assets somebody may have and through social security.

So what ends up happening is the average participants, you're probably talking about somewhere between in the neighborhood of 40 to 50 percent has to come from the 401-K plan. You project that out using Monte Carlo simulations.

I would say certainly I'm sure the top 100, 150 consultants out there and maybe more have this capability to project that out and say, okay, this is what it is going to look like in all likelihood, because you run

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thousands of simulations and you have an idea of whether or not it is going to get somebody across the finish line.

What you find sometimes is that a target date series which might be well designed, good named investment company but for this particular plan doesn't work because people aren't saving enough, people don't have average balances big enough, they can't get there, they are going to fail. The whole plan will fail if they choose that target date series so you don't want to do that.

For another plan it might be a very valid and reasonable choice. So it takes a lot of -- I think it takes a lot of work to in a really prudent way to make these choices. And then this has developed over a period of the last 50 years. I mean we are literally 50 years away from ERISA coming into play.

All the things that we have been talking about, almost none of them existed when ERISA was founded. In fact ERISA assumed everybody would be in a defined benefit plan for the most part.

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Q. I hear you. I just know we just celebrated the 50th anniversary. We had some parties here at our firm to commemorate that.

A. That's okay, yes.

Q. So a couple of follow up questions there. What you just walked through in terms of the things that a committee in a prudent way would consider in selecting a target date fund, would those considerations come into play when monitoring the prudence of a selected target date fund in terms of retaining it for the plan?

A. Yeah, it's not something that you would report on quarterly because you're not going to rerun what I just described, the Monte Carlo simulation, you're not going to rerun that quarterly.

If something were under consideration for -- let's say it was on a watch list, I will use that is a broad general term because I know in this particular case they used several different terms, and if you go look at 20 plans they may use a couple of different terms for that. But in general

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something that needs more scrutiny, we call that a watch list. Then you might go back and rerun this at that point and say is this thing working the way it is supposed to. Is there something that has changed in its composition that requires more scrutiny.

I think you take a much deeper, I will use the term deep dive, but in this case it is very specific to the target date series that you have to figure out what is going on with it and how is it working with that plan.

You're going visit with the manager, you're going to spend time with them and you're going to look at -- you're going to spend a lot of time looking at their operational processes, you're going to look at their -- some of the qualitative things that we haven't talked about and everything.

I guess the point is, you might rerun that type of information at that point when you've gotten to a stage where you're considering making a change. You may or may not ultimately make that change, but when you're on watch, then that to me is you have

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heightened scrutiny. It is not just saying, watch and walking away from it. You actually need to do some additional work to look at it.

I would expect a committee to be saying to their consultant or their advisor, we need you to go back and come back to us with what is going on with this thing. Why, you know, great it's underperforming, but why is it underperforming. What is actually going on under the covers that is making this happen. And it may turn out that, well, you know, it's a blip, it may turn out that there are reasons because of changes in the firm, there may be reasons that that particular approach is out of favor.

There certainly can be explanations and then the committee has to be thoughtful to consider, you know, are we still comfortable whether those explanations are satisfactory or perhaps we need to consider making a change. Again, just because it goes on watch doesn't mean you change it, but it certainly does mean that you give it additional scrutiny.

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Q. So there would be circumstances in your experience where there is underperformance of a fund, but it is still appropriate to continue to offer that fund in the planned?

A. Yes, as long as you continue to do the additional scrutiny while it is under watch and then if the committee gets comfortable with that, that's obviously a choice, that is part of what they are supposed to do is make a choice as to whether they think it is appropriate or not.

Q. You mentioned the Monte Carlo simulation; is that right?

A. Yes.

Q. I'm not familiar with what that is. Can you explain what that is?

A. Yes. In a simple way, because I haven't run these in a while, so Monte Carlo simulations basically are -- and you see this -- I mean for example, when you look at -- maybe the easiest thing to think about is, we are in hurricane season and when you go out there and you got a hurricane coming towards Florida and they show you the cone of

uncertainty as they call it, which shows all the possible routes that hurricane can take. They've run thousands of simulations to create that cone of uncertainty or whatever as to where it is going to go. All the inputs that go in.

So in the case of Monte Carlo simulation for a target date fund, you're going to think about all the different possible permutations. You're not going to think about it, you're going to have the system run it, that could happen.

For example, you have immediately you start having bad returns and you have bad returns for five years in a row, or you immediately have incredibly good returns or it's level returns over the entire 35, 40 year period, the career of a person.

So the mathematics are running all of those different kind of permutations of what might -- what those returns might look like. And literally -- we would typically run I think at 10,000 we figured out that we had all we needed. And what happens you begin to see --

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then you start to kind of -- for purposes of looking at the, what we were talking about, about who is going to get across the finish line, you look then at kind of the median of all of those. You wouldn't take the outliers, whether they are positive or negative, you're going to look towards the median of that.

So that's probably the most likely outcome that you're going to see. And how does that work if we said that a particular participant -- and we will just break it down as a participant. A particular participant needed $1,500,000 at retirement to meet this 80 percent goal including social security, does this simulation do that, okay. If it comes up and says well, no, the most likely case is they're going to be at 1 million 3, that is not very good. If it says they're going to be at 1 million 6, we are kind of happy about that.

There may be three or four or five target date series that are successful that way for the largest number of participants. So then you have to do -- then you start doing additional analysis to figure out which might

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be the right choice for that entity. You're going to look at how smooth the ride is. How comfortable the ups and down that go on along way.

I'm not how much more detail you want on that. But that's kind of how you do that. It's a mathematical simulation that projects out what possible returns could be and the sequence of those returns over a broad number of years.

Q. So I want to make sure I'm clear and I don't want to get into the total minutia of this. But you're essentially suggesting there is a program where you would input the demographic fits or objectives of your plan for which you're solving for?

A. Yes.

Q. And attempt to create over the long-term, so for the average retiree a certain level of returns and the system would look at all target date funds in the market or is it a subset?

A. It is not looking at target date funds. It's looking at returns at that point.

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So what you plug in -- let's say we have participant Bob, okay. So Bob is currently deferring -- I'm just using an individual -- but you use averages obviously. You could run it for every participant. You could make it -- you can individualize it for everybody but then that could get incredibly expensive.

So would you typically do is you run it for the plan which means you look at the average deferral rate, you look at average contribution by the company, you look at average balance and so on and so forth or you look at the median or you run it for both of those.

So let's say that the average participant is contributing 6 percent and the average participant has a balance of the $90,000. The average participant is, let's say it's a company that has a fairly old workforce that the average participant is 20 years from retirement. You plug that in and then you plug those numbers in and so you have that $90,000 balance and you're now going to run that out with that 6 percent contribution rate and

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you're probably going to look at other things like does the plan have other escalations.

So is Bob going to be or the average participant, are they going to be putting in 7 percent the next year and 8 percent the year after. So you can build that in as well.

Then given those numbers, then you run the simulation with returns for a mix. So you can run that mix against a particular asset allocation which let's say would be the T. Rowe Price Funds or it could be the Fidelity or it could be Van Guard, it could be whatever. And you run those for each one of those against their allocation because their allocation is going to have, depending on how conservative -- you're going to run those for each allocation against those average balances and the way those balances are going to grow and everything over time.

That is how you get at the end analysis that at 65 the probability is that this person will have a balance of X. This average participant or median participant

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depending on how you run it.

Q. How is it -- --

A. That is very common. It is run by all of the different advisors in consulting firms that I used to work with and interact with and over time and everything. It is not an unusual program. This has been around for a long time.

Q. Is it something that you used as a consultant?

A. We used it for every single client for a target date fund. That is how the selection -- that was a big part of the selection process because we might come up with three choices. There is 42 different -- as of I think as of last year there were 42 different target date series, not counting any custom things that are out there that are available in the marketplace. Some have gone out of business over the years others have come into the business in the last few years, there is around 42 of them out there.

The only way that you're going to narrow this down is to tie that from a prudence perspective, is this going to make sense for our

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client. The real basic level is this is why you want diversification in the first place and so on and so forth.

If we go back to what the Department Of Labor has said, you're supposed to have at least three asset classes, well, everybody has a lot more than that. Everything is based off of building on that. So it is available to most of the firms out there that I'm aware of and has been for a long time.

Q. So how is it that -- one piece that I think I'm struggling to understand, how is it that you decide as a consultant or as the common industry decide which target date funds to run in the program? You said you could, for example, use T. Rowe Price. How would you whittle it down from 42 to however many you're going to run in the program?

A. We typically -- we wouldn't run 42 different runs probably. Most firms don't actually track all 42 or whatever the number happens to be today. But there is a large subset that they probably are watching.

So certainly if it is on your --

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if you have a buy list or a recommended list or preferred list of managers, because those are the ones that you have the highest conviction in, you'd run it against all of those and there might be five, six different managers. But you probably have run it internally against a much larger subset over time to determine is this somebody that we should be looking at for our clients that we should be considering.

We would've run it against probably 20 different products that were out there as a part of our process. Not for a particular client, but for the firm in order to be able to recommend things to our clients.

Q. Okay, but if you're looking at a particular client and they are looking to make a target date fund selection, you mentioned a preferred list. What is that?

A. So every -- I won't say every. The vast majority of investment consultants have a buy list or whatever they call it, whether it's a buy list or preferred list or a high conviction list or whatever, but it's a group of -- you had your investment team

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analyzing -- going out and looking at managers all the time. This is true of every asset class.

So you go out and you say, okay, these are the five managers, there is 600 large value managers, but out of that we really have a high conviction because we have been to see them in their office, we've seen their operational processes, we've looked at their stability of the organization and we've looked at their returns, the construction methodology, we looked at -- it goes on and on. And we have a really high conviction of this manager and this manager and this manager.

You typically might have five different target date managers that you have a high conviction and five or six large growth managers or large value or whatever and in all the asset classes you would do that. That is very typical. Those would be the ones that you would start with certainly on the target date.

Now, if none of those, I can't imagine, but if none of those worked out, you could go on and look at others as well. But

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you've already whittled it down to some extent because these were ones that you have -- you've seen what they have done, you have a lot of history on them and we have a lot of history at this point for target date.

And these are the ones that you -- somebody said through -- if your grandmother said what should I buy, this is one of ones that you would recommend to your grandmother because you're comfortable with it for any of a number of reasons which you would articulate in the internal notes that you keep on fund managers.

Q. At your time at PSA and Pavilion, I'm going assume that your testimony here relates to your capacity as an investment advisor at Pavilion as well, which I know that we haven't talk about yet. Is that generally fair?

A. That's fair, yes.

Q. Can you name the target date funds that you had a highest conviction rate with?

A. Yeah, the highest conviction managers might have changed a little bit over

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time, because we're talking about a number of years, but the highest -- in general the highest conviction managers would have been T. Rowe Price as an active manager, JP Morgan as an active manager, but also as a blend manager which is to say they use some passive, some active. Blackrock as a passive manager. Van Guard as a passive manager. State Street as a passive manager. And then American Funds as an active manager.

Those would have been probably been the recurring -- the ones that would have recurred most often.

Q. Did you ever have a conviction rate with the Fidelity Freedom Funds to your recollection?

A. We used the Freedom Funds -- we used Fidelity -- I don't know about the -- Fidelity has several different versions. So I don't recall that the Fidelity funds -- Freedom Funds were on our high conviction list.

We did have some clients at some point in time and I'm thinking this was actually way prior to the class period that we

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are talking about who did use the Freedom Funds, but I believe those clients moved out of those, the Freedom Funds, at some point and probably this would have been 2008, 2010 period. But that's very hazy in my mind. So that is just a general.

Q. No problem. So just a couple of other things on this simulation exercise.

Once you ran the exercise and you whittled it down to from maybe six target date funds and then a handful of those would work, quote/unquote, work for your clients. Then what are the other factors that you would consider as a consultant in providing advice as to which to select?

A. So let's say that three of the funds all passed those screens that you just mentioned. As I mentioned a couple minutes ago, one of the things that we look at next is, okay, if all three of these get across the finish line, so to speak, which one is probably going to be the most comfortable ride for participants. Which is to say going to have the lease volatility over that period of time.

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So one fund might be just really fabulous, it knocks the lights out ultimately, but the ride was like being on a roller coaster all the time, that is probably not the one that you are going to recommend. You're going to look for something -- if there are three of them that past those screens, you're going to look for something less volatile.

All things being equal, one that's less volatile would be one that you'd probably recommend to the client as opposed to a more volatile choice.

Q. Any other factors that you would consider at that point in time?

A. Well, you're going to look at things like when do people -- at that point you may look at the to versus through idea which is if I went to a client and they said, like most clients would, well, most of our participants take their money out within one year of retirement. Then it doesn't matter which one you choose because the to or the through are both going to be fine because people are going to take their money out right after the

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retirement.

If somebody said our participants they really trust us, they are likely to keep their money in the plan and we would like them to keep their money in the plan because we think they get the fiduciary oversight, they get better pricing blah, blah, blah. Then in that instance maybe one of the decision factors would be of these three is one of those a through choice as opposed to to.

So it's a conversation with the committee they will all work for you, but let's find something that seems to be the best choice, all things being equal. Those are -- there are probably some other factors, but those are the big ones.

Q. When you talk about volatility, just help me understand. What factors would be driving volatility or what you would be looking at to determine the volatility of a certain fund?

A. Well, keep in mind we projected out the returns based on all the factors that we talked about, and then when -- you're going

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to have a lot of lines on a graph, if you can picture it, sometimes those lines are going to be smoother for some target date series then for others, which means they have fewer ups and downs in the market. Maybe they do a little better job of protecting on the downside when the market isn't -- as a bear market or a down market even if doesn't go to a full bear market.

Others are going to be we are pedal to the metal and we are going to generate great returns, but when the market goes down we are just going to get hammered at least for a period of time.

So you're going to have that line that is going to be very jagged. It is going to look more like a lightening bolt as opposed to smoother line. That is the visualization of that volatility.

Q. You talked about the to versus through, are you referencing a glide path there?

A. I am.

Q. And is that an important

consideration when determining whether or not to pick a certain target date fund?

A. Well, as I mentioned, you have to versus through. I think it is only -- it is important in two ways. One is if a committee says our participants keep their money in the plan so they need something that is going to continue to adjust over time, then a through would make sense in that instance. Most plans that is not the case. Despite the fact that a lot of people would like people to keep money in the plan, there are a lot of committees that would like people to keep money in the plan, typically they don't. They roll it into an IRA or do whatever they are going to do.

But the other factor that people are going to look at is at retirement age, so at 65, that arbitrary age we all kind of focus on, what is the equity exposure at that point. The range is going to be -- in the industry is going to be from about 20ish percent to about 55, 57 percent. Okay. So it's a pretty good range. So that is going to be the other factor.

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Some committees may say, well, I don't want to have that kind of volatility or potential volatility with a 55 percent exposure to equities at 65. I want my participants to have less than that and so of the three that you're bringing to me, one of them has 55, one of them has 45, and the other has 42, they probably want to focus on talking about the 42 and 45 and in trying to decide between those two.

Q. So would you look -- well, let's say this differently.

Are all glide paths the same?

A. No, glide paths can be -- they all start in a pretty close proximity to each other. But after that, there is a broad range of, one, where they end up ultimately. And two, there is a broad range when they decide to begin to lower the equity exposure.

So that changes, there's a broad range of choices there. There are ones that are 35, 40 years to retire and they are already starting to diminish equity exposure. There are ones that wait to more like 20 years before retirement before they do it.

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So there is a lot of variety of how these are created and keep in mind the asset allocations under -- that make up the glide path. We are thinking about it as equity, fixed income and cash, well, it is really, you know, equities could be international equities, it could be emerging markets, it could even be frontier markets, probably not, but could be. It's going to be domestic markets, it's going to be the exposure of large cap versus small cap.

So all of these go into when you look at a glide path you're just getting the first snapshot of how these are created. And it's a -- again, this is why I think it's a process. Everything about ERISA is a process. It's a process to educate committees, but they need to understand how these work because it might look very simple on the surface that, you know, I don't want a lot of equity exposure at retirement and then you show them, yeah, but your participants are unlikely to be successful.

One plan I looked at a lot a while

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back, to give you an example, the average balance was $5200. There is no way that those folks are going to get a successful requirement. Most of them aren't going to get to having the balance no matter what when the average balance is 5200. They obviously need to be encouraged to save a lot more. But they also need to have an equity exposure to have any chance of having a reasonable balance at retirement.

Now that is an extreme on one end, but that's a -- actually that's a billion dollar plus plan. You can look at the other end and say you got a defined benefit plan, heck, you don't need to save that much.

So the answers can be quite different for each plan. It's just a very thoughtful process to go through.

Q. That's helpful, thank you.

Turning back to I want to go back to we talked about the qualitative -- quantitative factors that you would present to your -- to the committees which you served as consultant.

What about the qualitative factors that would be presented to a committee for

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consideration of monitoring its investment options?

A. Okay. You want me to just enumerate them.

Q. Yes, if you can.

A. So I think I've spoken to a couple of these before, but you're going to look at the manager tenure, the depth of the team, stability of the organization overall and you can see some of these are related to each other, but they are different.

You're going to look at the operational processes which actually means looking at how does their trading desk work. How good are they at trade execution which can make a real difference over time. How well do they control risk internally. How do they diversify so that they don't find themselves -- you know, how do they track that they are not getting too heavy into a particular, let's say into tech or too heavy into consumer durables or whatever the heck it may be.

You want to look at how they put this thing together. And you want to look at

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reputational risk as well.

So there a number of factors that come into play in that regard. Because they are qualitative they are a little bit more -- you're not going to -- you're not reporting on hard metrics as much. There is some of that which is the how long has the manager been in place, is it a single manager, is it a team. So on and so forth.

Some of the metrics are a little bit harder to report as just a metric.

Q. Understood. So was it your experience that the committees or was it your expectation that the committees considered these metrics each time you provided them in monitoring investments offered in the plan?

A. You do want them to consider them. You want them to understand the qualitative why it is important if there is something that you're telling them about that is qualitative metrics or a measure, you want to make sure that they understand where does that play into the equation and everything.

It is one of -- quite often it is

not one thing that makes you choose a particular manager or makes you decide to not choose a manager or to remove a manager, whatever. It is usually a combination of factors that come into play.

So and you're not going to report on the qualitative -- you know, there are certain things maybe it will just be in the book, but it is not something that you're going to spend time talking about. The manager has another quarter of experience this quarter, you're not going to go into that. As long as it is the same manager you're not going to worry about that.

Q. When you talked about the quantitative metrics you mentioned, I think, comparison to peer group and I think I'm quoting you accurately, you said that was very important.

A. Yes.

Q. Why is that very important?

A. Well those are the -- and I think that is -- I mean you're looking at two different things. You're looking at, they're related but

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they are different. You're looking at how a fund is doing versus its benchmark. You're also looking how it is doing versus peers.

Peers are the -- you can't invest in the benchmark, but you can invest with the peers. So if you're -- you would not want to choose, I don't think, somebody who is lagging their peers substantially. It is just another snapshot of that -- of how well are they doing. How is that performance. It is another element of that.

I think in target date funds it is very relevant to see how are they doing versus other funds that are similar to them.

Sometimes you do an analysis of -- if you have a to fund, I don't think this is important myself, they may say we want to see what other to funds are doing and you compare this against maybe five other to funds as opposed to through funds. So there are different ways that you slice it.

The peers is actually what real managers are doing in realtime out in the real world versus what your particular manager of

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your investment product is doing.

Q. So is there specific for the reporting metrics that you would provide to your client, is there a specific time period of performance versus benchmark and performance versus peer group that you would typically provide or expect to see?

A. So I think this goes to -- the answer is yes. And in a vacuum you want to look at as many different things as you can. So quarter, year to date, one year, three year, five year, 10 year if it exists. I probably wouldn't look much past that unless it was the rare case where the same manager had been in place for 15, 20 years. That does exist but it is not as common.

But I would also -- all of this needs to get tied very specifically to the investment policy statement. So the investment policy statement, you have to make sure that where your focus is is making sure that you're compliant with the investment policy statement. Not necessarily some set of metrics that you, as a consultant, think people ought to be

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looking at.

It is great that you have that, but your focus has to be on what does the investment policy say. Because that is a -- that's part of the plan documents and it is part of what the plan committee is going to use to evaluate. So it has to tie to that investment policy statement.

The investment policy statement, for example, says we wouldn't focus on three year, five year numbers, which would be reasonable. You may report on the 10 year, but you're not going to go put something on watch, for example, because the 10 year number is not attractive. Because that doesn't tie to the IPS. Now the IPS, of course, you can go out and you can rewrite the IPS. You can have a conversation on that but those things are reporting and the IPS really need to tie together.

And then a lot --

Q. Okay.

A. A lot of times you run into problems with that because of the way people

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create the reporting system.

Q. So let me just ask you this. Is it your testimony that if there is a reporting metric that is provided to the committee that the committee finds to be concerning and wants to put an investment option on watch, because of that your testimony is that they could not do that if the investment policy statement doesn't specifically require that?

A. No, no, no. Sorry, that is not my testimony. Keep in mind the committee has flexibility to -- it's a guiding document. The IPS is a guiding document and depending on how it is written, if it says you will do something then I think this a clear you're going to have to do that. But quite often it says you may do something. So you have to look at the language of it.

They can put it on watch even though the IPS doesn't reference it, but I think that raises an issue at that point of, okay, what is going on with our IPS. You want to take a look and say, why is it important that we put it on watch, but it is not covered

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in the IPS. That would seem -- it would raise other questions, I think, as opposed to --

Q. Got it.

You mentioned earlier -- I'm going to backtrack a quick second to this program that simulated the target date fund and you were talking about volatility in those simulations. Do you recall that?

A. I do.

Q. You're talking about -- when you're talking about volatility, you're talking about performance volatility?

A. That would be performance volatility, yes.

Q. Is the program being run or is it reflecting performance compared to a certain benchmark and peer groups or one or the other?

A. No. The simulation -- you're talking about the Monte Carlo.

Q. Yes.

A. The Monte Carlo is taking the demographic information that we talked about and it is then going and running that against all possible combinations or at least thousands

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of possible combinations of return sequences that could happen. It is not worried -- it is not looking at a benchmark or peer group, it is looking at actual returns.

So let's say, for example, it's going to look at returns for bonds using -- and you're going to have probably -- probably used a broad index for the Barclays Ag, for example, for bonds as the proxy. It's going to look at, you might use the Russell 1000 as the proxy for domestic equities. You might use something else for -- you could break it down as much as you want.

You can put in as many inputs, if you want to get down and have short-term bonds, but it is actually looking at projecting against those indexes what you're -- and running what you're balance might be. It is running against another fund. It is not running against any particular peer group or whatever. It is running against what those indexes might generate in returns going on a go forward basis.

Q. I see. I got it.

A. You got it, okay. Is that okay?

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Q. Yes. I'm okay, thank you. Generally speaking, when it comes to investment funds, do you agree with me that there are time periods where there are fluctuations in performance over time?

A. Absolutely.

MS. ENGELMAN: It's 12:45 eastern, can we take 20 minutes now and do a quick lunch? Does that work? I know it is probably dinnertime to you, Mr. Stone. Let's go off the record

THE VIDEOGRAPHER: The time is 5:44 p.m. and we are off the record.

(Lunch recess taken at 5:44 p.m. European standard time)

DONALD C. STONE
A F T E R N O O N   S E S S I O N
6:14 p.m.
D O N A L D   C.   S T O N E,
resumed, having been previously duly sworn, was examined and testified further as follows:

THE VIDEOGRAPHER: The time is 6:14 p.m. and we are on the record.

BY MS. ENGELMAN:

Q. Hi, Mr. Stone. We just had a short lunch break here on the east coast maybe dinner break for you. Welcome back.

Did you speak to your counsel during the break?

A. I did not.

Q. I have a hypothetical for you. So we are going to switch gears a little bit.

So suppose an investment fund underperformed its benchmark on a three and five-year basis for a single quarter. Would that in your experience require placement on the watch list?

A. It is usual it would be on for just one quarter. I think you have to go back

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and look at the IPS and see what it -- how it would direct you, if you will. So if something was -- I don't know how you could be on a watch list for a five-year period and had it happen just the one quarter. I mean the numbers are not adding up for me.

Q. The first quarter that there is a detection of underperformance against benchmark on the three year and five-year period.

A. Okay.

Q. Have you ever had a situation where a committee placed a fund on a watch list based on one quarter of underperformance, irrespective of any other factor?

A. I can't recall a specific instance where that fact pattern existed and so I just can't speak to that in terms of actual experience. As far as that is concerned.

I think that would be a obviously --

Q. Do you personally believe that a fund should go on a watch list if there was a three year and five year underperformance for a single quarter?

A. I think -- are you assuming --

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first of all, you don't know if it is going to be a single quarter, if I understand your hypothetical correctly. It is under for one quarter, you don't know what the next quarter is going to look like at this point, correct?

Q. Correct.

A. I think it's a conversation that you have with the committee. You certainly don't ignore it. Suddenly this thing is on watch for a three year and five year -- not watch. It's underperforming for a three year and five year, I think that becomes a conversation with the committee and it is possible it could go on watch because -- and particularly, again, looking at the IPS, you have to look at that and say, well, if there is criteria for the IPS.

There is nothing wrong with putting something on watch and saying this needs closer scrutiny, that is what watch means. So I don't think there is problem doing that. I think, but again, I would defer to the IPS and I would have a conversation with the committee and say they could make a

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determination that we are not going to put it on watch list, we will wait until next quarter.

But I think that would be one of those things that you look at and say, if it is on for one quarter it's probably really likely it is going to be on the next quarter too particularly for three and five year numbers. It is hard to see those rolling off.

So I think it would be reasonable to consider putting it on watch. I don't think you have to put it on watch, but it certainly ought to be discussed.

Q. How would your answer be impacted if the underperformance on the three year, five year comparison to benchmark was one basis point.

A. Well, again, I think you're still going to have a conversation and that's a conversation that you're having with the committee. It is only one basis point. I think it's a fair and honest conversation to have with the committee to say, you know, it is barely there, but here is where we're at.

I think you can also look at --

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one of the things that would happen in this case in your hypothetical, I would think that the advisor would go and say what number is going to drop off next quarter. Because you're always adding a number and subtracting a number, okay, for the three year and five year.

So something is going to go off and something is going to come on. You don't know what the number that is going to come on at the hypothetical point that you're talking about right now. But what you do know is what number is going to drop off.

What the advisor would be able to say is, yeah, it's one basis point now, but it is probably going to be back in compliance next quarter or it is going to be much worse off based on the number that is dropping off.

So I think you look at that. It's a conversation -- like I said, you don't have to put it on watch, but I think that raises the question that you want to have a conversation with the committee and have the committee make a decision as to whether they want to just watch and wait and see or whether they want to

put it officially on watch. They have that option.

Q. In your experience would the committee also want to look at, not just the three and five-year performance against benchmark, but also look at performance against the peer group?

A. Absolutely. I think at that point you probably step back and, again, if I was on the committee I would be saying, okay, so first of all is this going to be on watch next quarter and the advisor ought to be able to tell you right then a there. And then two, by how much, depending on what number is dropping off and is it going to have a magnitude. What's the magnitude of the impact. And then let's look at the other number.

It's a conversation that the committee is going to have to say, okay, there is issue here, let's take a look at it. It doesn't mean the house is on fire. It may turn out to be on fire, but at this point you don't know that. It is just we have an issue we ought to look at, we ought to be thoughtful about it and

take a look and see what else is going on to you point and look at the peer group and any other metrics that seem appropriate at the time.

Q. So similar hypothetical for you. Suppose a fund underperformed its benchmark again on the three and five-year basis for five quarters, irrespective of any other metric, would that automatically require, in your view, removal of the fund?

A. Well, again, I think you go back to what a particular hypothetical, what's the hypothetical IPS say. You go back to your IPS and it's reasonable that you two companies or two 401-K plans could have different IPSs that have different metrics, that's possible. They may be -- I would hope they would be similar but they wouldn't necessarily be the same.

The first thing is go back and look at the IPS and see what it says. See if it says will or whether it says shall or whether it say may. I mean this is a process and so ERISA is all about process, it is not about outcomes. So I think at that point

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you're going to -- five quarters, how far under is it, you have to look at the whole thing. I think you have to step back and look at the whole thing. The first thing is look at the IPS and follow the IPS. You don't look at anything else.

Q. So irrespective of an IPS, in your view, objectively, if a fund underperforms in a three year and five year compared to its benchmark only, irrespective to any other metric, should that fund automatically be removed from the plan lineup?

MR. ROBERTS: Objection to the form.

A. The answer is, I can't give you answer to that because you do look at a lot of other metrics. Certainly it would be on watch, but whether you're going to remove it that depends.

Q. When you are evaluating or monitoring the performance of a target date fund and a target date fund is obviously made up of many different vintages, right, correct?

A. Correct.

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Q. And those different vintages perform differently; correct?

A. They do, yes.

Q. So in your experience, when you are helping committees to evaluate the performance, for example, on a three year and five-year period of target date funds, how is it that you look at the target date fund as a whole in order to encompass the performance of the various vintages?

A. Well, I think you're going to look at, with the target date you're going to look at potentially three different things. You're going to look at the overall target date level and that would include all the vintages and what the -- how that performance is. And depending on how you're reporting on it, do you have a point system or not, whatever mechanism you use for that.

Two, you're going to look at each individual vintage and you're going to certainly rank them as to whether they are compliant or not in terms of peer group, in terms of absolute performance. And I think

that in some cases depending on what is going on on any given quarter you're not necessarily going to do this, but if you have a problem, you have an issue with a fund, then I think you're going to want to go and look at the funds that comprise each vintage and see what is happening with them. Because one or more of those funds is probably or is definitely driving that underperformance.

Usually there is a couple that are having the problem and you want to understand is this something that is kind of something that we might see from time to time or is there a bigger problem.

So I think you're going to look at all of those as a part of that discussion which you will have with the client.

Q. Did you ever have a scenario where you average the performance of the various vintages to look at the average performance of the underlying fund on a three year and five-year basis?

A. I've seen that done. I think that -- I have some concerns about that because I think

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it can hide issues. I think as opposed to -- I think it is done to kind of clarify things. At least that was the original idea. We could rate this fund a 6, we could rate it a 5, we would rate it a 10, whatever the scoring would be in that case. And that keeps it simple in a sense, but it also completely I think hides -- you don't really know what is going on or what's driving that issue.

So I'm skeptical of kind of rolling that up in an average or, for example, if I'm going to take an average, why wouldn't I take a median and say that you could get into this kind of go down a rabbit hole and I'm not sure that is helpful to a committee. Could they use that, they can, if this is what they choose to do. If this is what their IPS says.

Let me go back. I think committees operate differently and there is no one perfect IPS and I'm not suggesting there are. I think there are elements that obviously have to be in any IPS and committees can make different decisions based on -- may make different decisions based on similar facts in

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some cases. But, again, it comes back to it is not about the outcome, it is about process with ERISA.

Q. Kind of along those same questions with regard to evaluating the performance of a target date suite. In your experience would you say that if in your experience, Mr. Stone, in evaluating the performance of a target date fund suite, would you say that if more than 50 percent of the underlying vintages were underperforming, that that meant that the target date suite was underperforming? Did you reach that conclusion in your experience?

A. Yes.

Q. Was that always the case?

A. I would say, just again on that hypothetical, I would say if 50 percent or more are underperforming, then I think -- then obviously I think there is an issue that needs to be looked at with that particular target date suite.

Q. Could a committee look at the performance and the level of performance or

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level of underperformance and reach a different conclusion?

A. You kind of went to the heart of what I said a few minutes ago. You need to evaluate it. You can't just let it go. You need to spend the time to go an evaluate what is the underperformance. What is causing that underperformance. And then you may make a decision that right now we think it is okay still. Okay. I don't think that is possible without doing the evaluation.

In other words, the whole point is what the -- the hypotheticals you're bringing up trigger a needed response by the committee and the response is not absolute, every single time no matter what you have to do A and it is not that you have to throw out the fund. It's that you have to evaluate it and make a determination as to what the appropriate action is.

Q. One more hypothetical along these lines and then we will move on.

So say there was a target date suite that underperformed its benchmark on a

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three and five-year period, but that benchmark outperformed 90 percent of the other assets in it's class, would that inform how the committee evaluated the underperformance?

MR. ROBERTS: Objection to the form.

A. Can you repeat that, please?

Q. Yes.

MS. ENGELMAN: Can you read it back, Bill, because I'm not sure I can say it. If he doesn't understand it I can rephrase it, but I don't know that I could repeat it exactly as I said it.

(Requested portion of record read.)

A. What you're saying is the benchmark measuring the target date fund outperformed 90 percent of all of the other target date funds?

Q. Correct.

A. So all the target date funds, 90 percent of them underperformed for some hypothetical reason, and that's at least theoretically possible. Again, I think what that would say to me, I, as a committee member,

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I would say, wow, that is interesting information. So again, and that would probably give me some degree of comfort in the short-term in looking at this, but I would still say, we need to understand why are we in that 90 percent. What are we doing or what is our fund doing. We just need to understand it better.

I think all of this triggers a need for additional looking and scrutiny to the situation. It doesn't necessarily right off top of the bat dictate an absolute answer. It dictates additional scrutiny.

Q. So I was going down your biography, Mr. Stone, and we went on a whole detour. So I'm going to reroute back to your sort of your background.

I understand doing the PSA time period you served entirely as a 321 consultant and then 2014, am I correct, that you sold PSA to Pavilion?

A. Correct, in June of 2014.

Q. And you became an employee of Pavilion at that time?

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A. That's correct. I was an employee and shareholder.

Q. What was your role at Pavilion from 2014 until you retired in 2019?

A. I was -- my title was executive director and I was responsible for a number of relationships that I was -- had been -- was personally working with at the time we sold the company to maintain those relationships, to make sure they stayed with Pavilion and to ultimately transition them to other people, but not in that initial three year -- the first three years.

Then I was also responsible for being one of the spokespeople for the firm. So I did a lot of public speaking. A lot of conferences. I did some writing. I also continued my being on the executive committee of DCIIA, that's D-C-I-I-A, which you will see in my CV or in the bio I should say.

So I continued that role as well, which was obviously promoting better outcomes for participants. But that gave visibility to Pavilion.

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I also did due diligence on managed account products and probably a couple of other things along the way. I did some training of some of staff at Pavilion.

Q. So did you -- in your role at Pavilion, did you serve as a 338 advisor to any clients?

A. I did. In 2017 I served as a -- began serving as a 338 for a defined benefit plan of one my clients. I want to say 1.2 billion or so.

Q. Okay, do you remember which client that is?

A. Yes, it was I think in the record, Packaging Corp of America. In 2018 I became a 338 for the defined contribution plan as well.

Q. Is that the only plan -- for Packaging Corporation of America, is that the only plan that you served as a 338 advisor?

A. That's correct.

Q. So the record is clear, what is the difference between a 321 and a 338 advisor?

A. So a 321 advises, provides advice to clients that has no discretion. The

ultimate decisionmaking responsibility lies with the committee. 338 has discretion to act on the investments within the mandate that they have been given.

So you could have a -- you could be a 338 for one investment choice in a plan, for example, or for the whole plan. And the committee still maintains some monitoring responsibility of that 338, but it does shift a lot of the liability for actual decisions to buy fund A or fund B to the 338.

Q. When did the 338 relationship, your 338 relationship end with Packing Corporation, is that when you left Pavilion?

A. When I left Pavilion.

Q. When did it start?

A. So the defined benefit started in 2017, the defined contribution in 2018.

Q. With respect to the 321 relationships, did you continue the relationships you had from PSA into your time at Pavilion?

A. I did. And I was responsible for transitioning those relationships into Pavilion and helping ensure that they were happy and

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would remain clients. And then I was responsible, ultimately, this would have been in 2017, some time in 2017, maybe late 2017 early 2018, to begin transitioning those relationships to other advisors within the firm since I knew I was going to be retiring at -- I didn't have an actual date at that point, but I knew some time in the future I would be and it wasn't that far off.

Q. Just to take this step by step. From 2014 to 2017, early 2017, how many clients would you say that you were personally providing 321 services for?

A. Probably 15.

Q. 15?

A. Yes.

Q. Do you have an approximation of the range of the plan size from small to big?

A. Yes. Probably the, probably from the small end would be probably 30, 40 million. With probably half of those relationships maybe slightly more being just under or well over a billion.

Q. I missed that last part?

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A. Just under or well over a billion.

Q. That is a large range. How many plans would you say were $100 million and less?

A. I'm guessing at this point, but I would say probably no more than three or four.

Q. How many would you say were over a billion?

A. I said just under to over a billion I think it was probably in the neighborhood of 10 or so of the 15. So there is a couple that would have been in let's say half a billion dollar range.

Q. Did the quality of the services that you provided as a 321 consultant vary depending on whether it was a small client or large client?

A. No. You asked me that earlier today. Even at Pavilion it was the same. We provided the same service.

Q. Did you have -- for these 15 clients in this time period, did you have other individuals working alongside you as a consultant or was it just you?

A. No, it was -- I had a team to help

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me. For example, quarterly reports, we had at that point we had probably 50 people doing research in reporting. I would have people who would prepare reports for my review. I would have investment analysts who would do additional information if there was a need for some kind of a deep dive on a particular manager or not, I would be directing someone to get that information for me. I might be involved in that process as well, but I would have somebody else who is kind of driving it in that regard.

And I would usually have a, at least, some other, I don't want to say junior consultant, but somebody who was less experienced than I was, let's just say it that way, who would also go with me to meetings. So I would always have at least two people at a meeting, sometimes three, depending on what the topics were.

Q. From 2017 on you said you started to transition clients to people who were less experienced; is that correct?

A. Well, not necessarily people -- to

people who were not as close to retirement, let's put it that way.

Q. Did you have any role with respect to those clients from 2017 on?

A. It was an iterative process where I was involved with some of them all the way probably halfway through 2018, maybe a little longer.

Q. I'm going to ask a similar question of PSA. Do you feel that you personally fulfilled your fiduciary duties with being a 321 consultant with respect to each plan that you worked with?

A. Are you talking with Pavilion or PSA?

Q. Well, at both.

A. Yes, I think I fulfilled my responsibility, yes.

Q. For the people -- for whom the people that work under you and work with you, do you have the same feeling with respect to both PSA and Pavilion?

A. Absolutely. I trained a lot of them, so it was a -- I trained a lot of them

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and there was a particular way that we wanted to -- if you want to think about it, it's a process and we wanted to be very careful to take care of our clients. That is my personal philosophy about how I approach things.

So if you have a client -- you have a responsibility to take care of them and treat them the way that any other client would be treated for that particular service that you're providing.

Q. With the committees with whom you worked, do you feel as though they were good and prudent committees?

A. I do feel that. Obviously there was a range of skill sets. There was a range of size of committees, sophistication, so on and so forth. But this is where, you know, we would not -- we actually refused to take on a couple of assignments at some time in the past I remember because I did not think they were going to take it seriously and I thought it was going to be a problem and I didn't want any part of it.

So the key is is that every single

committee we drove the process to say you have to get -- we are going to provide fiduciary education and somebody joins the committee, there is a process that they go through. They get removed from the committee we want to make sure that they actually have been removed from the committee and documented in writing. It's a very clear process frankly to avoid problems, but also most importantly to make sure, to the extent that you possibly can, you're acting in the best interest of the participants.

Q. You mentioned a range skill sets. What do you mean by that?

A. People come on to a committee, there are people you go in and the committee is already in existence, the plan is already in existence and you get to know people and you realize -- not to pick on HR, but quite often HR is not as investment savvy as the finance people. And then sometimes the finance people think they are more savvy than they actually are in terms of fiduciary issues or whatever.

So committees from a large corporation tend to have a bigger talent pool

to pick from to be on the committee. Sometimes they have already got established more robust processes before we come in. Sometimes not.

And at smaller clients quite often we go in and here is what we would like to do, which is one of the reasons that we got hired. This is what we -- the process that we want to go through to get you tuned up to where you need to be to make sure you're overseeing the plan appropriately, to make sure that we are doing the best job, you're doing the best job that you can for the people in the plan.

Q. Was it generally common in your experience for HR folks to be part of the committee?

A. Yes.

Q. Is that because the committee does more than simply do financial analysis and monitor investment performance?

MR. ROBERTS: Objection to the form.

A. Yes, typically -- sometimes there was a separate administrative committee, so that's not unusual at some large corporations.

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But generally it is one committee and the -- so there are issues that you deal with in terms of plan design. There are issues that you deal with in terms of, did you payroll right. Did you not include -- there are a lot of issues that happen with these plans and everything and so all of those issues would typically come to a committee at least to report out what is being done.

In some cases those administrative issues would be handled outside the investment committee room, but they would report back in as to what the follow up was. There was a lot of issues in terms of revenue sharing, in terms of how we are going to account for, we have a para account which is an account that could be set up to pay expenses of the plan and to actually reimburse companies for people who are working, spending most of their time working on issues around the plan and there are complicated rules around that.

So there is a lot of things that an administrative person does versus an HR person. Certainly the whole plan design issue

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is a big issue for that side of the house.

Q. Generally speaking at Pavilion, are you aware of any consultants who worked there who you do not think fulfilled their obligations as a 321 consultant or otherwise worked with imprudent or disengaged committees?

A. I can't speak to whether -- to what the committees were like for somebody that I never met. So I can't really speak to that.

I would say the staff, all of the consultants at Pavilion, I think I met all of them because we had multiple offices, but all the ones that I knew I think were serious and dedicated about the work they did. And we had a common process about how we went about -- what we presented to clients and how that -- how those decisions got made at to what to show them.

To go back to what we talked about earlier today. The process for picking a target date fund would have been the same if it was me, if it was a colleague of mine who came over from PSA or if it was somebody who had been at Pavilion for ten years before we sold

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the firm to Pavilion.

Q. Got it, okay. And that would be the same for not just selecting a target date fund, but retaining a target date fund or monitoring a target date fund?

A. That's correct. All of that would be the same and in fact the research person who was primarily responsible for spearheading the target date efforts and to track them and to investigate all the products that were out there was one of my staff from PSA that came over.

Q. And she did all of that work for Pavilion?

A. He did.

Q. He did, sorry. When you sold the business from PSA to Pavilion, did the reporting capabilities change? We talked earlier about reporting capabilities and how those can change over time. Did that happen?

A. So the defined contribution reporting essentially stayed the same.

Q. Okay.

A. The defined benefit reporting was

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enhanced because Pavilion had been primarily focused on endowments, foundations and defined benefit plans and one of the reasons why they wanted to acquire our firm is because of their expertise in defined contribution was more limited. So we had more resources, I will say, but the systems that we used, the actual reporting systems that we used I don't believe changed at all.

Q. You talked earlier, sort generally speaking in the industry how reporting systems can change. Do you recall that testimony?

A. Are you talking about scoring systems or are you talking about reporting -- like there are three or so major reporting systems that everybody basically goes out and buys. I'm not sure what you're saying.

Q. What are those reporting systems?

A. One of them was produced by Morning Star. One of them is produce by Markoff Systems and the third is -- the third -- I'm not remembering the name right at the moment.

Quite often it is not unusual for a shop to have two of those in-house and use

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them in different ways.

Q. Those reporting systems may have different metrics embedded into them and spit out different metrics in different formats?

A. They all have the same metrics available. You can select which metrics you want to see. If you're printing out something, you can go in and customize those pages to include only the -- you can suppress some data and include other data, depending on what as a firm you decided what you want to show a client. All the metrics are available on all of these systems.

Generally speaking, if you go and look at -- I looked at probably the vast majority -- I've looked at all major firms out there for sure, they are all pretty much reporting the same stuff. It may look maybe formatted a little differently, but there is nobody out there who is, that I know of, who is not reporting or peer groups. There is a nobody out there who's not reporting absolute performance. There is nobody out there that's not doing risk adjusted performance and so on

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and so forth. So everybody is providing that same data pretty much.

Q. So you did mention scoring systems earlier. How many of your clients at PSA or Pavilion utilized a score system of some sort?

A. I don't think we used a scoring system at the client level at all. In fact I know we didn't. We never did that. A lot of our -- okay, some of our colleagues did and some of our colleagues didn't, but we never did use that.

Q. Do you have an opinion about whether or not just as a general matter a scoring system is appropriate or inappropriate in evaluating investment options?

A. I guess I will ask you what do you mean by appropriate or inappropriate in the context of what we are talking about here?

Q. Do you think it's a prudent way to monitor investment options as a general matter or an imprudent way as a general matter?

A. I don't think it is necessarily imprudent. I'm not a huge fan of scoring systems, but I don't think by definition they

are imprudent, no.

Q. Mr. Stone, in your report you make several references to the relevant time period. What time period are you speaking about?

A. Can you show me a particular place in my report where that -- I'm not going to do a memory test tonight.

Q. Sure. Give me a second. Paragraph 60 as an example.

A. 6-0?

Q. Yes.

A. Let me get to that. I'm on 60. You want me to read through that?

Q. In the second sentence you say, "The committee generally met quarterly during the relevant time period."

What is the relevant time period that you're referring to there?

A. Well, I would be referring to the class period is I guess what I'm saying.

Q. Okay. What is the class period?

A. I believe it began in the end of 2014 and runs to the present.

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Q. You believe it began in 2014?

A. I think at the end of 2014 is when it began.

Q. So if we turn to the conclusions in your report which are on page 66 paragraph 148.

A. 66 paragraph 148. Okay, I'm there.

Q. It says, "The conclusion is the committee failed to established and apply a reasonable process to monitor the challenged investments." Do you see that?

A. I do.

Q. So what are the challenged investments that you're referring to there?

A. I think we are referring to the Freedom Funds.

Q. Anything else?

A. I think that's the focus.

Q. So when you say the committee failed to establish and apply a reasonable process, do you have a time period associated with that?

A. It is over the entire period that

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is covered within my report which talks -- which focuses obviously starting in 2014 and goes into probably 2020 at least.

Q. Do you have a sense of when the class period runs through?

A. Well, the class period as I understand it, that we are still in the class period.

Q. You said your report ran from 2014 to 2020; is that correct?

A. 2020 is about where it I stopped commenting on things, yes.

MS. ENGELMAN: Can we go off the record, I'm having issues with him freezing and I don't know if it's just me.

THE VIDEOGRAPHER: The time is 7 p.m. and we are off the record.

(Recess Taken.)

THE VIDEOGRAPHER: The time is 7:05 and we are on the record.

MS. ENGELMAN: Bill, would you mind reading back the last thing that you have.

(Requested portion of record read.)

BY MS. ENGELMAN:

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Q. Why is it that you stopped commenting around 2020?

A. Basically the period that I was focused on has to do with the behavior that took place in 2015, 2016, 2017, 2018, 2019. 2020 they put in a new IPS and I think there was, also at that point there was some additional training that was being offered from a fiduciary perspective.

So I didn't think there's was a lot else to comment on that point. In talking with counsel that was the period they wanted to focus on I guess is the best way to put that.

Q. So is it your opinion that -- did you review all of the materials relating from 2020 forward or you didn't review the materials at all?

A. No, I did. I reviewed all the documents that I said I reviewed. I looked at all of them. If you notice there is nothing in my report that goes into that further period.

Q. So when we look at the litigation documents that are cited in Appendix B, that goes through 2024, the first quarter of 2024

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and you reviewed all the materials through 2024; is that correct?

A. What was the last document in 2024?

Q. It looks like you reviewed the meeting -- everything up to Q1, 2024.

A. That sounds right, yes.

Q. Do you know when in 2020 your recorder of what month your opinion essentially stopped?

A. I'd have to look at my report to figure that out at this point.

Q. Sitting here today without looking at your report you don't know when in 2020 you stopped defining?

A. No, I can't tell you what month, no

Q. But it was some time in 2020?

A. That's the last thing that I actually wrote about, yes.

Q. Is it your opinion then from 2020 to 2024 that the process was prudent?

A. I did not reach a judgment as to whether it was prudent or not during that

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period.

Q. So when we say -- when we look at your conclusions on paragraph 148 when it says, "The committee failed to establish and apply reasonable processes to monitor the challenged investments." You're talking about a period that is from 2014 to some time in 2020; is that correct?

A. Yes, that be would correct.

Q. So from 2020 on it is not your conclusion that the committee failed to establish a reasonable process to monitor the challenged investments; is that correct?

A. Well, again, I have no comment on it. There is commentary in my report.

Q. What I'm trying to understand is if you independently made a determination as to the reasonableness of the process during that time period or whether counsel told you that you should not focus on that time period?

A. Counsel did not tell me not to focus on it, but we did not focus on that time period.

Q. Who is we in that sentence?

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A. Well, I didn't spend my time looking at documentation on that. So I think it has to do with when the -- the Freedom Funds changed over was what, 2019, so that's a significant change. When they got out of the Freedom Funds and got into the other fidelity funds that is where my opinion ends.

Q. You think that happened in 2019, is that your testimony?

A. I think they switched, again, I don't want this to be a memory test, we could look at my report. I think they switched out of the Freedom Funds in 2019. I don't remember what month.

Q. So focusing I guess on the -- do you know what month your review in 2014 started?

A. I looked at all of 2014, because I looked at -- actually I looked at all of 2014. I was looking at meeting minutes so I would call it the entire year of 2014.

Q. So from January 1st, 2014 to some time in 2020 was the focus of your review?

A. That's what my report covers, yes.

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Q. When you say that the committee failed to establish an apply a reasonable process to monitor the challenged investments, is there anything specific in 2014 that was unreasonable in your view?

A. Well, I think one of the things is we don't know how the Freedom Funds got into the mix in the first place. They were selected prior to -- I believe prior to Ascende being the advisor, if I remember correctly. So when you look at the minutes, again, the minutes to me and the IPS is from 2015. So -- I don't think it was -- I don't recall an IPS prior to that. So the IPS was 2015 I guess is the relevant document.

Q. So I appreciate that. My question is a little different which is, can you identify anything specific into 2014 that the committee did that was unreasonable with respect to monitoring the Freedom Funds?

A. I don't think they had a process in place to monitor them that tied to the IPS. What the advisor was providing, I don't know that it tied to an IPS.

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Q. In 2015 is there anything specific other than what you just mentioned that you identified as unreasonable with respect to monitoring the Freedom Funds?

A. Well, again, I think in 2015 the funds should have been -- they were on -- they were on watch and they were on watch -- one of interesting things, they weren't on watch for underperformance and yet the funds were underperforming. And that ties into the IPS. But what they were actually on watch for, at least the way they came off of watch later on, they are were on watch because of the lack of a three year performance number at all for some of the underlying funds.

I think that raises a question about how they got selected in the first place. If you don't have a track record you can look at how do you make a selection in that particular instance. That's the first thing.

The second thing is, if they actually are underperforming overall, each underlying fund, why wasn't it on watch for that purpose at that particular time.

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Q. Mr. Stone, are you offering an opinion on the committee's selection of the Freedom Funds?

A. No, that is prior to the class period. So I don't have an opinion on that. I think -- I have questions in my mind about it. I have no idea how it got in there. I guess I'm saying Ascende doesn't seem to have asked how it got in there as well and didn't seem to do any due diligence, from what I see in the record on how they got in there as well.

Again, it is prior to the class period, so that's kind of not an issue. I'm not volunteering any opinion.

Q. So it has nothing to do with your report; is that right?

A. I think --

MR. ROBERTS: Objection to the form.

A. I think the selection process -- I have questions -- it carries forward. Okay so in the period when they were chosen in a sense is not relevant because it is before the class period. But the same behavior, unless it is

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corrected, carries forward into the class period in which case nobody looked at why they got selected. Nobody went back and why did we select these things, why are they here.

There was is an opportunity to do that when they were on watch for not having three year numbers in some of the funds. That would have been an opportunity for the committee and advisor to suggest that they go and take a deeper look and understand how did they choose these and are there -- do we want to consider other alternatives.

Q. Was is it your opinion that when Ascende became the advisor in 2015 it should have evaluated whether or not the Freedom Funds were an appropriate investment option?

A. I would think they would have done that for all the investment options that were in the plan. That would be a normal part of the process.

Q. Is it your opinion if at any time that Ascende became the investment advisor there was any underperformance as compared to benchmark or peer groups, that that fund would

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be removed at that time?

A. Again, I can go back and look and say what does the IPS say and the answer I'm going to give is the same one I gave awhile back which is, it doesn't instantaneously mean that you're going to remove it. It means it needs to be reviewed and you need to understand more of the reasons for the underperformance. And there may be a reason that you would keep it and there may be a reason why you would remove it.

Q. Got it.

Moving forward, I want to make sure it is clear that your opinion is that anything prior to the class period is irrelevant, correct?

MR. ROBERTS: Objection to the form, misstates testimony.

A. What I said was is that the behavior carries forward and is current during the class period because they didn't change anything. They had an opportunity to look at it and see whether it was appropriate or not, but they didn't do that.

So obviously I could have an

opinion about 2009, that wouldn't make any difference either. That is irrelevant. But what is relevant is that if a behavior carries forward into the class period, it is relevant to that case. And that behavior did carry forward because nothing changed. They didn't do a look at that and determine whether or not it was still an appropriate choice to have in the plan.

Q. In 2016 did you identify any particular deficiencies or parts of the process that were unreasonable in 2016?

A. Well there is things in my report and -- I don't -- well I could go through the report, there are comments about 2016. But I have to look through the report. I'm not going off my memory to try to remember specific dates or things in 2016. If you want to show me something in my report I'm happy to comment on it.

Q. Well get through it. I'm wondering sitting here today whether or not you have an opinion on whether or not you know there was something in 2016 that you deemed to

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be unreasonable in the process?

A. I think the -- again, without looking at my report, which is what I would ask to do, but having said that, the behavior in 2016, nothing changed, okay, in terms of trying to comply with the IPS. There were a couple of funds that I believe -- I think it was 2016, but again I would like to look at my report to confirm it, where the way it was reported by Ascende is different than the way the IPS reads. The two didn't sync up.

The committee didn't pick up on this, they were getting reporting that was showing compliance in one way when the IPS called for compliance in a different way. And that happened a couple of different times over different time periods.

Q. The same question for 2017, just do you have any sitting here today do you have any opinion as to whether there was something inspect in 2017 that was unreasonable with respect to monitoring the Freedom Funds?

A. There is certainly -- in 2017 is when there was a draft of the IPS that was -- a

new IPS was drafted, but it was not adopted. But Eagar, I guess that's his last name, Eagar, specifically said that the reporting that they provided to the committee was based on that 2017 IPS which was never adopted. So the committee was getting information that really -- they weren't able to -- they weren't getting the appropriate information as to compliance on -- I don't know how many different funds were affected, but definitely some were affected in that regard. And they didn't ask about it. And I think they were kind of getting, just assuming that the investment advisor was tying about back to the IPS or not, but they weren't. And they didn't ask about it and that's their responsibility.

Q. Other than what you just mentioned, anything in 2017 that you deemed to be unreasonable with respect to monitoring the Freedom Funds?

A. Again, I would want to look at my report. I don't want to try to go off my memory particularly it is getting late here. I'm happy to go look at any page that you like

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and comment on it.

Q. We will do that, I want to get through these questions.

2018, anything that you can recall that you identified specifically for that reason that was unreasonable in terms of Quanta's process for evaluating the Freedom Funds?

A. Well I don't think anything change in 2018, so I guess the same thing would apply in 2018 in terms of the performance reporting being based on an IPS that had not been adopted. So that is problem. Nobody asked anything else about it. There may have been other things, but again, I would refer to my report.

Q. What about 2019?

A. Another draft IPS which was ultimately adopted in 2020. And actually one thing that I would want to comment on going back over this period that you were just asking about, as a part of this in the noncompliance, there were three different systems over that, call it 4 1/2 year period. Three different

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scoring systems that were being used by Ascende and its successors that don't tie to an IPS. Don't tie to the IPS that Quanta had specifically.

So they had three different ways they were getting reporting. So they were not getting the information they needed and they were making decisions based on information that in some cases was not accurate as to how they would expect to see compliance. So some things may have been showing as compliant when they weren't and vice versa and what have you, because they weren't operating off the existing IPS. And it kept changing the system that they operated off of.

And at one point and this one I don't understand at all. I believe this was in 2019, basically the committee said stop showing us these scores on each of the funds. They just wanted to see whether it was pass or fail. Then one of the committee members, I think it was Campbell said that she didn't want to see the word fail. She wanted to use a different word.

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But bottom line they didn't -- so there was additional information, I would think any committee would want to know what the score was. If you're using a scorecard, even it's the wrong one in this case, if you're getting reporting on it, you'd want to know what the score was because, to your point earlier, what if you're just one basis point off, well that is a different circumstance than if you're a hundred basis points off. They didn't want the score. So the score got dropped on that. I have no idea why that happened. I don't find that to be a good system to be followed.

Q. Mr. Stone, isn't it exactly the opposite, that if you don't get the score but you just look at the underlying criteria, you're actually looking at the level of performance as opposed to what the scores tells you?

MR. ROBERTS: Objection to the form.

A. So it depends on what they received. But, yes, if you get the underlying information, that's great. But if the -- but the score is what is driving whether or not it

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was compliant or not. That's where the disconnect is on that. You can have the information and the information could be saying whatever about the fund which could be good, not good, whatever, but the -- what made it compliant or not was the score that it got. They didn't want to see the score. You can have a fund that was actually okay, but if it had a bad score then it would be showing as not okay.

So I think the process is --

Q. Okay. Do you take issue with the fact that the committee wanted to evaluate the underlying quantitative metrics independently on their own as opposed to looking at a score irrespective of the IPS just as general matter? Do you take issue with that?

A. I don't have an issue with them wanting to look at the information, the underlying information about each of the funds. That is not an issue. But I would expect them to look at it in relationship to the IPS. To not have the IPS as part of that conversation I think is a problem.

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Q. We will come back to that later. I want to focus on 2020. Do you have any specific issues with the process that the committee undertook with respect to evaluating the Freedom Funds?

A. Again, I would say I would like to look at my report and --

Q. Sir, you can look at your report any time you like.

A. I'm sorry?

Q. You can look at your report any time you like.

A. I understand that. If I'm having to search for where something is, it could take some time to find some of those things as opposed to you have some very specific things in mind and I think it will serve the purpose of everybody better if you'd direct me where you'd like me to look and comment. I'm happy to do that.

Q. I understand, I will. I'm just trying to understand based on your knowledge sitting here today whether or not you know there is anything in 2020 specific.

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You mentioned in 2020 a new IPS was adopted, isn't that correct?

A. That's correct.

Q. Do you have any recollection of whether or not that IPS had any sort of scoring system attached to it?

A. I believe it did, but again, I would like to look at my report.

Q. If it did, did you look to see whether or not the committee from 2020 forward received information that was consistent with the scoring system in the 2020 IPS?

A. No, I don't think so.

Q. Why not?

A. Well, again, at that point the Freedom Funds were not in the mix.

Q. Okay. So it is your opinion that as of 2020 the Freedom Funds were not in the mix and therefore you did not need to review the committee's fiduciary process from 2020 forward?

MR. ROBERTS: Objection to the form, misstates testimony.

A. I was not asked to review from

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that point forward for to '24 to have an opinion about that because the funds that were at issue were not in the plan.

Q. If the funds were in the plan past 2020, would there be a reason that you wouldn't look to see if the scoring system matched with the criteria that the fiduciary committee was evaluating?

A. No.

Q. So you would agree that you should have done that if the Freedom Funds were still in the plan as of 2020?

A. Yes.

Q. Do you know if there are any other challenged investments in this case?

A. The only ones that I'm aware of were the Freedom Funds at this point.

Q. So Mr. Stone, do you have an opinion, based on your review of the materials in your report, that there should have been action with respect to the Freedom Funds by the committee?

A. Yes. I think that as of the end of -- as of the fourth quarter 2015 they would

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have been on -- they could have been a watch for four quarters at least at that point. In fact I think that would have been a fifth quarter at that point. I think, again, there should have been a process where the committee took a very hard look at whether those funds should have been removed or should have stayed in the plan and there should have been documentation either way on what conclusion they reached and why.

Q. Do you have an opinion that they should have removed the Freedom Funds as of a certain date?

A. Again, I think they needed to do the analysis to determine -- so my remit here was to talk about fiduciary process. I didn't do a deep dive and your question is assuming that I went out and did independent analysis of the Freedom Funds during that particular period and ran all the analytics and everything and I did not do that. I was not asked to do that.

Q. I understand --

A. So it goes back again to the point I was -- my role as an expert is to talk about

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fiduciary process, not necessarily to provide in-depth information about any particular investment at that time.

Q. But you mentioned the fourth quarter of 2015, you made a specific very specific reference to that and underperformance. So what I'm asking you is, do you have an opinion as to the fiduciary process, whether or not the process should have -- my question is, you mentioned fourth quarter of 2015?

A. Yes.

Q. So what is the issue with the fourth quarter of 2015 that you were referring to?

A. The number of quarters that the fund could have potentially been on watch for underperformance.

Q. So is it your opinion that it should have been on watch or that it could have potentially been on watch?

A. I think it should have been on watch and I think the committee should have determined that, but they did not put it on watch or performance. In fact they -- it gets

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worse, because they took it off of watch, it had been on watch for the fact that some of funds, underlying funds did not have a three year history. And when those funds got a three year history, irrespective of the fact that the funds were underperforming relative to the benchmark, they took it off of watch at that point which I think is -- sends a very strange signal and is something that I can't recall seeing in my past and everything that you would take a fund, even if it is on watch for a different reason, at the time that you start -- you want to remove it from being on watch in this case for some of the underlying funds not having a performance history.

I cannot recall seeing a fund come off of watch that in fact has a long period of underperformance at that point. I think that just speaks to me that they weren't looking at the underperformance at all and it could get kind of crazy if the next quarter they decide to look at it and say oh, this underperformance is really a problem we need to put it on watch again. I think that process is -- that's a bit

of a mess.

Q. So we will get to some of those details. I'm just trying to hone in on whether or not you have an opinion that the committee should have removed the Freedom Funds from the plan lineup at a certain period of time?

A. I think they should have done -- I keep coming back to this. I haven't done -- I don't have all of that analytic data in front of me. I know the number of quarters that it was underperforming and I know by how much because that is in the report here. But what I don't have, I don't have the information to make the determination that you're asking me to just blithely say it should have been removed.

What I can say, it should have been subject to substantially more analytical analysis which might have resulted in it being removed, but I can't say at this point because the work wasn't done.

MS. ENGELMAN: So let's pull up the IPS, the 2015 IPS Maria.

(Exhibit 2 for identification, 2015 IPS.)

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A. I assume it is still loading.

Q. It usually takes a minute. I'll get to that in a second. I'm going to turn your attention to --

MR. ROBERTS: It looks like it is up now.

Q. One question for you, Mr. Stone. You mentioned some draft IPSs. Is it your view that those were operative or inoperative?

A. They were not operative in my view and I think a couple of committee members specifically said they, in their deposition, they did not think it was operative. And I would say it was not operative because it was never signed.

Q. You make some references to the draft IPSs in your report. Why is it did you do so if they are not operative in your view?

A. Because I think they were used by the advisor to generate their reporting.

Q. Do you see it Mr. Stone?

A. The IPS?

Q. Yes.

A. I have it open.

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Q. This is the 2015 IPS; correct?

A. Yes.

Q. And in your view this was in operation until the 2020 version went into effect; is that right?

A. That would be correct.

Q. And you had an opportunity to review this IPS as part of drafting your report?

A. I did.

Q. Generally speaking, is it a pretty typical IPS in your experience?

A. For the most part, yeah, I would say, yeah, they all vary a little bit, but for the most part it is fairly typical, yes.

Q. Is there anything that you can identify that is not typical, in your experience?

A. No, I was just thinking about that. I don't mean to say there is something atypical. I think the -- as we go through it, I can't think of anything that is a major problem or issue with the 2015 IPS, no.

Q. So you opine -- let's just take a step back here. If we turn to page 2 of the

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IPS.

A. Okay.

Q. That last paragraph where it says "The purpose of the IPS is to provide the plan and fiduciaries with guidelines which will establish the plan's investment objectives and the process for promoting these objectives." Do you see that?

A. I do.

Q. I think you testified earlier that you agree that the IPS is a guideline for the committee?

A. Yes, I think I testified that in general it's a guidepost that the committee uses to have a consistent process. But there are parts of it that are obligatory and parts that are not obligatory and subject to the discretion of the committee members.

Again, this gets back to the language that we talked about earlier. If it says will, then I think they have to follow it. That is what will means. If it says may, then that obviously applies discretion on the part of the committee.

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Q. So if you can turn to page 12 of the IPS. Are you there?

A. The Bates number seems to be right on top of it, so I'm just -- tell me what it says at the top of the page and I will be sure that I'm on the right one.

Q. I'm looking at "Investment Objectives Criteria for Review and Review Processes".

A. Okay, that is what I'm on.

Q. "Performance Evaluation Criteria." Are you with me?

A. I am.

Q. The second sentence says, "To address this the committee will monitor the plan's investment performance on at least an annual basis and evaluate each of the investment opportunities pursuant to the guidelines detailed herein." Do you see that?

A. I do.

Q. Do you agree with me that the committee monitored the plan's investment options more than on an annual basis?

A. Yes.

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Q. Then it says, "Performance evaluation will include, but not be limited to, comparisons to appropriate benchmark, indexes and peer group comparisons." Do you see that?

A. I do.

Q. Do you agree with me that the committee evaluated performance and the IPS mandated that performance be evaluated not just on benchmark, but on peer group comparisons and other factors?

A. Yes.

Q. Do you see the next sentence where it says, "Performance will be measured by comparing rates of return to appropriate market indexes and peer groups for the most recent quarter, year to date, one year and three year periods and longer periods where available." Do you see that?

A. But that is not the next sentence, that was the next -- that was another paragraph down.

MS. ENGELMAN: It is saying my internet connection is unstable, can we take five.

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THE VIDEOGRAPHER: The time is 7:47 and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 8:01 and we are on the record.

MS. ENGELMAN: Bill, can you tell me the last thing that you got.

(Requested portion of record read.)

BY MS. ENGELMAN:

Q. You see it in the IPS, is that correct, on the page?

A. I do.

Q. So then we look at -- if we go to the next page, Mr. Stone, is the investment watch list page.

A. I'm there.

Q. The first sentence says, "The committee may place an investment option on monitor alert status and conduct a thorough review analysis of the investment options." Do you see that?

A. I do.

Q. Do you agree that the committee has discretion as to whether or not to place an

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investment option on monitor alert status?

A. That's their job is to evaluate that.

Q. Then is --

A. But here is where the IPS gets a little funky. If you go back to the previous page. In the second paragraph it says, "When a fund fails to achieve its stated objective, the reasons for the failure will be evaluated and the committee shall determine whether the option shall remain, be frozen or replaced."

So that doesn't quite sync up with the other page. That gets back to kind of what I've been saying all along which is they actually need to go and determine the reasons for the failure needs to be evaluated.

That is not quite the same as saying you don't have to do anything with it, as I think you were alluding to on the subsequent page.

Q. What does the stated objectives mean to you?

A. The stated objectives of the fund?

Q. Correct.

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A. Not of the committee or whatever?

Q. Well, it says "When a fund fails to achieve its stated objectives." That is the sentence that you just quoted; is that correct?

A. Yes.

Q. Do you know what the stated objectives of the target date funds are, the Fidelity Freedom target date funds are?

A. Well I don't know that it's necessarily the stated objectives of what, in this case, what Fidelity would say, but I think it probably refers to the stated objectives that the committee has for the plan.

So that goes back to where does it rank, its having a competitive return and blah, blah, blah, blah, okay.

Q. That's not what this sentence says. This sentence says, "When a fund fails to achieve its stated objectives."

A. Well, its stated objectives may -- I read that to refer to its, for example, its performance relative to the IPS standards.

Q. Is that what that says there?

A. That's what I'm reading it to

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mean, okay.

Q. But you agree with me it says when a fund fails to achieve its stated objectives, correct?

A. Correct, you're having a different definition of what its stated objectives are. We are disagreeing about that.

Q. So we have a grammatical disagreement about how to read a sentence?

MR. ROBERTS: Objection to the form.

A. I'm say it is not very clear because you think it refers to what Fidelity says about the fund and I'm saying I think this is all in language within the IPS itself. I don't think -- if they had referred to what the investment manager's stated objective is, that would have been probably a different conversation. But I'm reading -- I guess that is what we get with indefinite pronouns like its.

I read it as being a reference back to the IPS and the objectives that the committee has for the funds in the plan and not

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anything that Fidelity may have as an objective.

Q. Would you agree with me that the objectives of a target date funds are to meet the needs of retirement for individuals invested in the target date fund?

A. Yes, I mean there is nothing -- it's a rather anodyne statement. You can't argue with that.

Q. If we turn back to the watch list page, Mr. Stone.

A. Yes.

Q. The second sentence says, 'The committee may consider the following criteria when placing a fund on monitor or alert status? Do you agree with that?

A. Again, this goes back to why we went to the previous page. I'm not sure this language syncs up with what the previous page says.

Q. Okay, just to be clear, what is it exactly -- what exactly in this previous page do you think does not sync up with that page?

A. So it says, "Thus, when a fund

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fails to achieve its stated objectives, the reasons for the failure will be evaluated and the committee shall determine whether the options shall remain, be frozen or replaced."

That contradicts what it says on the subsequent page which is the committee may do any of these following things.

So I don't think those two sync up. I don't think the IPS is written very tightly in that regard. Those two shouldn't be out of alignment with each other.

Q. Do you agree with me that the sentence that says "When a fund fails to achieve its it stated objectives the reasons for failure will be evaluated."?

A. Yes.

Q. Strike that.

If you move to the second, the page that I was on in the investment watch list criteria page.

A. Okay.

Q. You see the list of options or list of criteria that the committee may consider, do you see that?

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A. Yes.

Q. Do you see anywhere in here where it says that a consideration is the three and five-year performance against benchmark?

(Witness reviewing document.)

A. I think that is another strange thing about it. It is talking about -- so this is where -- this is another thing that is in my report. The IPS does not mention performance at all in these particular criteria, which is extremely strange that in a watch list criteria you would not mention performance versus a benchmark.

Q. You're incorrect that it doesn't mention performance at all. The first three bullets are performance criteria; correct?

A. It talks about against a peer group, which is fine, okay. Risk adjusted return and they talk about the Information Ratio. All of which is fine. Okay, I'm just saying I've never seen an IPS that doesn't go and have as potential monitoring -- potential watch issues the performance of the fund against the benchmark. I've never seen that in

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my 40 years.

Q. So you agree with me that it is not listed here in this criteria?

A. It is not listed, no. And it was later on added in I think the draft of the 2017 IPS which was not adopted, but I think they realized they left it out.

Q. Do you know whether it is included in the 2020 IPS?

A. Not off the top of my head. I have to look at it.

Q. When you were preparing your report, did you look to make that determination?

A. I looked at the '15, I look at the '17, I look at '19, which was eventually adopted and I looked at the signed 2020 as well. But I'm not going to remember everything off the top of my head at this particular point.

Q. My question is, do you remember looking particularly for the issue of whether or not the inclusion of the benchmark was included in 2020 adopted IPS?

A. I think I looked for whether it was included in later versions of the IPS. I'm

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sure I did.

Q. When we go back to the earlier page 12 which is the performance evaluation criteria, is it your view that the plan objectives were for the Freedom Funds to outperform its benchmark on the three and five-year period? Does it state that somewhere in the IPS?

A. Where are you looking?

Q. You were focused on this second sentence. In the second paragraph in the performance evaluation criteria when it says, "When a fund fails to achieve its stated objectives" and your testimony is that that relates to the plan's objectives for a fund; is that correct?

A. Correct.

Q. Is it your belief that the plan's objectives for the Freedom Funds were for it to outperform its benchmark on a three and five-year basis?

A. No, I don't think it said that.

Q. Okay. If we turn back to the investment watch list process.

A. Okay.

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Q. The bottom paragraph it says, "Once an investment option has been assigned a status of monitor, it should remain with the status for up to four consecutive quarters. Without documented approving on the underlying criteria, it will be advanced to a status of alert no later than the fifth consecutive quarter of underperformance." Do you see that?

A. I do.

Q. Do you agree if there is an improvement of the underlying criteria, the IPS does not mandate an advancement to alert status in the fifth consecutive quarter?

A. Let me read that again.

(Witness reviewing document.)

A. So I think what that is saying is -- what I read it as saying is that if it doesn't improve, then it is going to go to the alert status no later than the fifth consecutive quarter which to me would also say it could go to an alert status earlier. And I'm not sure that it -- it doesn't really speak to the issue of not having gone on the watch list at that point or in the monitor.

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Q. But you agree with me if there is improvement, the IPS does not mandate it be advanced alert status; correct?

A. That would be correct.

Q. The second to last sentence says, "The committee at its discretion may change an investment status outside of these standards as each fund is separately evaluated." Do you see that?

A. I do.

Q. Is that pretty typical for the IPS to allow discretion of that nature?

A. Well, again, as long as it is consistent with other parts of the IPS, yes.

Q. You can put that document down for now.

I want to turn back to your report. Give me a second to find the paragraph. So paragraph 34 of your report, Mr. Stone, if you could turn to that, please?

A. Okay, I'm on that page.

Q. So you state in paragraph 34, "On at least a quarterly basis, fiduciaries should review and analyze the impact of

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economic developments on the plan, the performance of each plan investment across all relevant metrics, and the qualitative and quantitative factors relevant to the fiduciary's decision to retain or replace any investments on a watch list." Do you see that?

A. I do.

Q. So it's your testimony that not a single metric is informative necessarily of a fiduciary's decision, but they must consider all of the qualitative and quantitative factors?

A. Well, I think that is misreading what I wrote there. Obviously what we are saying -- what I'm saying, the fiduciaries want to look at all of it. But that doesn't speak to whether one of them should be called out and one of them might be enough to trigger taking a look at everything.

It says that the fiduciaries should be looking at all of these things. This is, you know, to retain or replace something on the watch list. It says you should look at all of them, which is correct, okay.

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Q. Okay, got it. So the last sentence it says, "Consistent underperformance over longer periods is usually grounds for removal." Do you see that?

A. I do.

Q. What do you mean by consistent underperformance?

A. This is a generalized statement which could be somewhat different from one plan versus another, depending on what their IPS says. But generally speaking, consistent underperformance means over an extended period of time to be defined by, again, each committee may define it slightly differently.

I will tell you that generally in the industry more often than not it is somewhere between four and six quarters, although that is not a hard rule, because it's this is a -- because it is a -- it's not a cookie cutter decision as to how you do this. You're looking at all factors.

You brought up before, you're one basis point under. Well, that's a very different fact pattern than if you're a hundred

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basis points under. So you're not going to necessarily make the same decision based on that.

So consistent underperformance means over an extended period of time. Let's say somewhere between four and six quarters typically in the industry. I think that will generally be agreed upon. And that's usually grounds for removal. Again "usually" key word there. There are circumstances when that might not be the case. There are circumstances where it definitely would be the case. So committees have to use their judgment. It's not a check the box approach.

Q. When you're talking about underperformance there, are you talking about as compared to a specific metric?

A. I'm talking about underperformance may be compared to -- it could be across any of those metrics if it is underperforming.

Q. Let's turn to page 35 of your report.

A. Okay.

Q. You have given an opinion,

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Mr. Stone, that the committee meeting minutes by this committee were, I'm using your words, "woefully inadequate and cursory." Is that correct?

A. Correct.

Q. Did you review in full the entirety of the meeting minutes between 2014 and 2024?

A. I think I reviewed all of those, yes.

Q. Is it your opinion that every single one of those meeting minutes is woefully inadequate and cursory?

A. No, that is not my opinion. I didn't single out -- any particular one my might be fine. This is a general observation.

Q. I'm trying to understand how you reached the conclusion that there is a general observation if all of them are not cursory and woefully inadequate, how many are?

A. You can't have -- you doesn't necessary have to be every single one as woefully inadequate. Some of those meeting minutes are rather brief and they seem

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perfectly fine.

Part of the issue here is the minutes were taken by the advisor, they weren't taken by someone on the committee. So that is not unusual. I'm not faulting that per se.

What the committee meetings are is they're the voice of the advisor filtering what the committee talked about or said as opposed to -- so there are some of the substantive decisions that are not -- it is not clear how they made some of those decisions. So when I say this is a general comment, you don't have to have every one be wrong for it to be an issue in general. That's not -- that was not my claim that every single minute was wrong and should have been redone or whatever.

I think there is a generalized problem that they seem to be -- it's not clear when read through them exactly what the rationalization is for some of the decisions that are made. They are pretty anodyne. They are pretty vanilla. They don't really give me a sense of how did this decision get made. What were the issues that were concerned.

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Q. As a 321 consultant, did you ever take the minutes for any of the committees with which you worked?

A. I did. And as I said, that is not unusual in the industry. It is not -- it doesn't always happen that way, but it is certainly not unusual.

Q. How many clients with which you worked did you take the minutes approximately?

A. Probably a third, maybe it might have been slightly more than a third. At least a third.

Q. Do you have an understanding in this case that the committee members reviewed and commented on the minutes and revised them as appropriate?

A. I do. I do recognize that, yes.

Q. You testified earlier that some of the committee minutes were brief but otherwise fine. Do you remember that testimony?

A. Yeah, I said that just a minute ago, yes.

Q. What does that mean?

A. So it depends on -- that was just an offhand comment. But it depends on if there

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were any significant issues to be discussed and whatever, if there weren't and it was a short meeting or if it was an administrative meeting that didn't deal with the investments, that may have been fine. I'm not referring to a particular set of minutes in this particular case.

What I'm saying, when there were investment decisions that needed to be made, it wasn't always clear what the rationale was and it wasn't very clear what other discussions may have gone on and whether there were any concerns by any of the committee members that weren't captured.

Q. For each of those minutes which you identified a problem, did you include those in your report?

A. I didn't single out particular series of minutes, no.

Q. Why not?

A. It never crossed my mind. In general the minutes were taken the same way each time. So in general I felt they were deficient for the reasons that I gave.

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Q. Well, you testified earlier they were only deficient in so far as the -- you didn't believe the rationale was adequately captured, correct?

A. That happens in a lot of cases when something is being monitored. There is always something going on. In most of the minutes there is something going on.

Q. Do you have an approximation of how many -- first of all, do you know how many minutes you reviewed?

A. I don't have the exact number, no. There was a lot of minutes, but I don't remember the exact number.

Q. I'm going to represent to you that according to your report in the litigation documents you reviewed 37 minutes.

A. Okay.

Q. Do you have any sense of how many of those 37 you took issue with?

A. No.

Q. So do you agree with me that you provided one example in your report of a deficient meeting minute?

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A. I'd have to look at that, but that sounds correct.

Q. Do you have any -- did you decide which example would be included in your report?

A. It was part of the conversation that I had with counsel. I don't know exactly whether I brought it up, they brought it up, I don't know.

Q. So it's your testimony it could have been counsel deciding which example would be in your report?

A. No, they didn't decide which example. You're misspeaking what I said. It is my report at the end of the day. I either agreed with it or I didn't. I don't know how a particular conversation went that would have taken place weeks ago at this point. That's not realistic.

Q. But you don't know if you took issue with half of the minutes, a third of the minutes, two of the minutes, you don't know?

A. Now we could go through them all right now and I will tell you as we go. We'll will go through all 37. We could do that.

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Q. You testified that you reviewed every single one of the minutes in preparation for your report. Your report contains one example of a so-called deficient meeting and I'm asking what other meeting minutes are deficient in your view. You reviewed them.

A. Okay, but I don't remember which particular quarter here, there or the other. If we looked through them I could give you that answer.

Q. If the majority of the meeting minutes are deficient, why didn't you include more examples of those deficiencies?

A. I didn't include every single example of everything in the report. I can't recall ever seeing one of these reports where every single possible thing is capture because it is way too long.

If the bottom line is I didn't, I think as a general process as I read through the reports and, again, in a lot of cases it just strikes me there is stuff that is missing. When I read through it there are things that simply aren't there.

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Q. Can you identify any of those things today?

A. If I read through the minutes I can.

Q. Did you read through the minutes in advance of your deposition today?

A. I did not read through them in the last -- I read through some of them yesterday, but I didn't read through them this morning.

Q. So based on your review yesterday, do have any recollection of other things that are missing from the minutes that you did not include in your report?

A. As I read through the minutes, what comes across is it's very -- it's, as I said before, it's anodyne, it doesn't tell me the rationale behind a lot of decisionmaking.

Q. What decision, you look at them yesterday, what ones?

MR. ROBERTS: Are you asking about a particular document or are you asking in the aggregate of 37? If you want to show him a document you can do that.

MS. ENGELMAN: I'm asking what he

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remembers from his review of the minutes yesterday.

A. At this hour in the evening, frankly I don't remember any specific minute, period. I can look through them and I'm happy to do that. For me to say I have a memory, I remember the meeting minutes from June of 2017, no, I'm not going to say that, that wouldn't be accurate.

Q. Is it your opinion that the meeting minutes from 2020 forward were compliant with the IPS?

A. I think it is the same issue that goes forward. Okay.

Q. You note in your report that the IPS was amended to reflect what needed to be included in the minutes. Do you recall that?

A. I do.

Q. Do you take issue with that decision? Is that uncommon in the industry to make a change to the IPS in terms of what needs to be reflected in the minutes?

A. You asked two different questions. That's a compound question. It is not uncommon

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for an IPS to be modified over time. In fact it is fairly common.

Q. Okay, let's turn to paragraph 86 of your report.

A. 86, okay.

Q. So you say here, "This is a glaring example of deficiency of the meeting minutes." Right? And this is the fact that the Freedom Funds were on monitor status in February, 2016?

A. Correct.

Q. Do you see that?

A. Yes.

Q. You say here "As of the fourth quarter 2015 meeting, the Freedom Funds had been on monitor status for four consecutive quarters." Do you see that?

A. Yes.

Q. Then you say, "The quarterly investment review presented at the meeting also detailed that the Freedom Funds were underperforming their benchmarks for a three and five-year period." Do you see that?

A. I do.

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Q. Then it says, "In accordance with the criteria of the 2015 IPS, if an investment on monitor status for four consecutive quarters shows no signs of improvement in the underlying criteria, it is to be advanced to alert status absent a documented decision by the committee to change an investment status." Do you see that?

A. I do.

Q. We looked at the 2015 IPS earlier and you agreed with me that the performance against benchmark for the three and five-year period is not included as a monitoring criteria in the 2015 IPS; correct?

A. Correct.

Q. Then it says, "The minutes of the fourth quarter 2015 committee meeting held on February 15th, 2015 reflected a number of investments were discussed in-depth to determine monitor status." Then it goes on to say what the minutes reported. Right?

A. Yes.

Q. I'm going to the middle of the paragraph, paragraph 88. "Given that the

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Freedom Funds continue to underperform their benchmark and that the advisor and the committee noted that no significant changes to the suite had occurred during 2015, it is entirely unclear how the committee arrived at its decision to remove the Freedom Funds from monitor status at this time." Do you see that?

A. I do.

Q. I believe you testified earlier that the reason that you're aware that the reason that the Freedom Funds were on monitor status as of this time was the lack of performance data for some of underlying funds; is that right?

A. That was the reason that they gave, yes.

Q. Were you aware of that at the time that you wrote this report?

A. Yes.

Q. So when you say that given the Freedom Funds continued to underperform their benchmark and that the advisor committee noted no significant changes to the fund suite occurred in 2015, were you aware at that point

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that you wrote the report that the Freedom Funds were not on monitor status for performance?

A. They should have been.

Q. But they weren't; is that correct?

A. Well, and that's a flaw by the committee, that they were not on watch status at that point. That was -- and to take them off monitor in general.

When you go on monitor, to come off monitor says that all the issues are resolved. That is typically the way that you think of that. When they came off monitor all the issues weren't resolved. They still had significant underperformance issues despite the fact that the IPS left that language out.

So my point is, I think the committee, regardless of whether -- because the committee has the flexibility to put it on monitor for any reason they want, and it's incomprehensible to me that they come and take it off of monitor when it is still underperforming.

They could have gone and said, okay, we are taking it off of watch for the

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three year number, but at the same time it would have made sense they we are going to keep it on watch because it is still underperforming. We are looking at it in a different lens at this point.

I think the committee -- I don't know if they just weren't paying attention or exactly what happened that they would take something off monitor when it's underperforming. Regardless whether it is specifically a bullet point in that 2015 IPS or not.

Q. So I guess that's my question. What is the basis for your opinion that it should have been on monitor as of -- for the poor performance, what is basis of your opinion?

A. Because I think the committee has a duty of loyalty to the plan to look after the best interest of the participants. And I don't think they were making a good judgment in that affect. Okay. It is incomprehensible to me.

Q. Do you know what the underperformance was at this time period relative to benchmark?

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A. There is a list that gives the underperformance fund vintage by vintage. I don't have it right in front of me. I looked at it earlier today, but I don't have it in front of me at the moment. It varied from being just slightly underperforming to being fairly substantially underperforming. So it varied depending on the vintage.

Q. So was this underperformance compared to index or compared to benchmark or compare to something else?

A. I believe that was compared to the index.

Q. Do you know how the target date funds were comparing as to peer group during the time period?

A. They were showing up a little differently. You're talking about the liber list?

Q. I'm asking you if you know.

A. The peer group performance looked better than against the benchmark.

Q. So is it plausible that the committee looked at the peer group performance

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and decided that it didn't need to be on monitor status because the performance against peer group?

A. But they didn't say that. This goes back to the minutes not talking about the rationale employed.

Q. Do you have any sense of whether or not the performance improved during the time they were stated on monitor until the time they went off monitor?

A. I think it varied depending on the vantage.

Q. Do you know one way or another?

A. And depending on the quarter. There was some improvement during I think part of that period of time, but by the same token they were still underperforming. So they never got above the waterline.

Q. You talk about in your report that the Freedom Funds were the plan QDIA; is that correct?

A. Yes.

Q. And that there should be some sort of heightened scrutiny around the plan's QDIA;

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is that correct

A. Correct.

Q. What do you mean by heightened scrutiny?

A. Well, by heightened scrutiny I mean, usually QDIA holds a large percentage, if not the majority percentage, of all the assets in the plan. So I think that the -- so just by share looking at raw numbers and number of participants typically involved as well that -- this is not a minor thing. It is not like it's a fund that is held -- some kind of select fund that is held by three individuals who happen to be in a C suite. It's a very different thing.

They are people who quite often have been defaulted, they tend to be unsophisticated people, they tend to be unengaged, their money is going into a suite of funds that they don't actually know much about and they are relying upon the plan fiduciaries to look after their interest. So I think that is why I say a heightened level of scrutiny is reasonable.

Q. My question was a little

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different. What is the heighted level of scrutiny? What does that entail?

A. The heightened level of scrutiny, it looks at it more carefully to be sensitive to the fact that you don't go and -- in this case you don't go and remove it because it doesn't happen to show up in the 2015 IPS to look against benchmark. You don't remove it from a watch list because it is still underperforming. You try to understand what's driving that underperformance and I don't see that anywhere they spent time doing that.

Q. Did you always do that in your role as a 321 investment advisor?

A. Of course.

Q. Mr. Stone, you opine in your report that the committee failed to review the services provided by Ascende and QPA; is that correct?

A. That's correct.

Q. Is it your opinion that the committee was under obligation to do an RFP for services by another investment consultant?

A. I don't think it was necessarily,

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although that would be the better way to go. An RFP per se, like I said, I think that would be the preferred way to go, but they weren't under a, quote, obligation to do just an RFP. They could have done an RFI, they could have had a -- they could have hired somebody to a benchmarking study of advisors. An RFP would certainly be the preferred way because you get so much more information, much richer.

The Department of Labor specifically does call out -- they don't call out an RFP, of course, but they do call out that you have to have a process for reviewing your service providers. And that would certainly include your investment advisor.

Q. But you agree that the Department of Labor doesn't require any specific manner in which to review your investment advisor; is that correct?

A. The Department of Labor doesn't require almost any of the things that we have been talking about, including an IPS, a charter, they don't require having a committee of multiple people. You could have an

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individual, it is not a good process, but you could do that.

Most of the things -- they don't require looking at peer groups. They don't require looking at risk adjusted returns. None of this is anywhere in ERISA because it is 50 years old and this has been an accretive process of what has been standard practice in the industry over a period literally of decades.

So none of this stuff is -- and the Department of Labor, I think, doesn't want to get involved in some of the level of detail in everything. I'm not sure the skill set is there.

Q. When you were a 321 investment advisor from 2002 to 2019, did you recommend to your clients that they conduct an RFP or a RFI for other investment consultants?

A. I had many of them go exactly through that. I never said don't do that at all.

Q. Did every single one of them do that annually?

A. First of all, you wouldn't do it

annually. You wouldn't do an RFP annually. But not every single one of them, as I recall, actually did it. But those were conversations that we had as part of the fiduciary training that your service providers, and that would have included us sitting in the room, you ought to be out periodically going through a formal process to determine if you have the appropriate choice.

Q. So tell me what specific steps you made sure they were going through -- every single one of your clients was going through a formal process to determine --

A. As I said some of them --

Q. Let me finish my question. -- to determine whether or not to continue to have their services provided by the PSA or Pavilion?

A. As I said a minute ago, not all of them chose to go through that. As a 321 I could make recommendations, I couldn't go and act for them. So not everyone of them went through a formal process. Many of them did.

Q. How many did?

A. I don't know exactly the number,

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but it certainly would have been well over half of our clients.

Q. For the other half you testified earlier that you believe all the committees that which you worked with were prudent engaged in good committees. Does your answer change given that they didn't go out and do a formal RFP and RFI?

MR. ROBERTS: Objection to form.

A. The thing to realize is, I don't even know if they did an RFP separate. Sometimes they don't tell you what they're doing. They don't include you in that process. If they do an RFI they don't include you necessarily. So there would be ones that I don't know what they did. I'm not included in some of those conversations or wasn't, I should say, included in some of those conversations depending on how the committee decided it wanted to act.

Q. But sitting here today you're aware of some of the committees in which you worked where you don't know whether or not they underwent any formal process for evaluating the

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services that you were providing? You have no idea one way of the other?

A. I don't know what process they went through. I won't say they didn't go through a process, but I don't know what process they went through because typically the existing advisor is not included in that process unless it's a full blown RFP.

Q. If you don't know what process they went through, how do you know they went through a process at all?

A. This is really a gotcha game and it is really rather childish at this hour of the day.

My clients went through rigorous training on what they should do. At the end of day they needed to take the action to go through a process to evaluate us. Sometimes they went through a process of evaluating us that we found out about after the fact.

Sometimes they went through a process that it was quite formal with an RFP which we knew about upfront. Sometimes they did it through talking to their peers. There

were multiple ways they decided to go about that. I did not have access to all of that data.

So I can't, for example, respond to their level of prudency on that particular element because I wasn't involvement in that process and I was there to provide advice not to dictate what they did.

Q. Let's turn to training. You talk about training for individuals who were onboarded on to the committee during the relevant period. Do you recall that line?

A. I do.

Q. Do you know whether any committee members were onboarded during the relevant time period in that case?

A. They talk about an informal process of onboarding that seems to come back to the conversation of being included in the quarterly investment reviews where there was some degree of fiduciary information provided. And there were I think a couple of years where there was a one-pager that I saw that bullet pointed various fiduciary things that people

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should be aware of which I would not consider anywhere near adequate fiduciary training nor would anyone else that I know of consider that.

So I don't think -- I think a couple of the numbers specifically refer to the fact that they did not get specific onboarding training.

Q. My question was a little different. Do you know whether or not any committee members were onboarded during the relevant period in this case?

A. I thought I answered that. I said some of them said they received -- that their onboarding was getting quarterly information as they were in the meetings.

Q. You're misunderstanding my question. I'm talking about the timeframe. Do you know whether or not anyone was actually onboarded during the relevant time period in this case?

A. You mean a new person entered the committee?

Q. Yes.

A. Okay, I didn't understand that.

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I'm trying to think who went -- there was a -- there was a change over of a couple of members of the committee, I don't remember the exact date, but the 2015 IPS I believe was signed by a couple of people that were not on the committee later.

Q. So you testified or paragraph 93 of your report, I will direct you there.

A. Okay, I'm there.

Q. You say, "Other than brief updates in quarterly investment review materials provided by the plan's investment advisor, no formal fiduciary education materials were presented to the committee prior to May 24th, 2021." Do you see that?

A. I do.

Q. What do you consider to be formal fiduciary education?

A. Well, I think it's a very -- it's -- probably a good example would be what was actually presented on May 24, 2021. It is like a 22-page document that walked through a number of issues. It's a question of how much you want to include.

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But the reality was that it talked about a lot of different aspects, what it means to be a fiduciary, how you monitor the investments. It talked about appointment to the committee. It talked about all the different processes that you look at and how you should also think about being a fiduciary. So it was a pretty detailed document.

I don't think it was -- I probably would tweak it a little bit if I were doing it myself, but that is neither here nor there I suppose.

I think it was a pretty rich and robust document overall as compared to what we saw prior to that period when for I think two years there it was a one-page bullet pointed document that I have no idea how much was -- what was spoken to from that and how that was presented. And otherwise it was just different updates during quarterly meetings which there is nothing wrong with updates during quarterly meetings, but it is not sufficient.

Q. So when you're talking about a one-pager, are you talking about the fiduciary

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essentials document, do you know?

A. That sounds correct.

Q. Do you know when that was presented to the committee?

A. It was presented on two different occasions as I recall and I don't remember the exact dates.

Q. Was it prior to 2021?

A. Yes, it was.

Q. Your position is that is just not a formal training in your view?

A. I think it's -- a one page bullet point is not formal training in any sense of the word in my mind. I think it is -- it's a complicated issue and people need help in understanding what they're supposed to do and it's certainly not an onboarding of anybody.

No, I don't think it is formal training at all. It didn't get into a lot of different issues that I would have gone into. And I don't know how much was spoken.

I want to add, even with the bullet points, I don't know what was spoken to those bullet points or not spoken to them in

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terms of the amount of relevant detail that would have been provided in terms of talking about fiduciary responsibility, investment monitoring and selection, you know, acting in the interest of the participants as opposed to the interest of the company or yourself, conflicts of interest. These are pretty meaty topics that require more than a single bullet point on a sheet of paper.

Q. Understood. You don't have any knowledge sitting here one way or another what was actually delivered in the fiduciary essentials presentation to the committee, you're just going off what is included in the one-pager?

A. That is the piece of paper that apparently was given to them.

Q. You don't have any knowledge or testimony or record of any sort regarding what was actually delivered, it could have been much meatier than what the one-pager suggests?

MR. ROBERTS: Objection.

A. I have no idea what was delivered. I cannot imagine that you can deliver -- based

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on those bullet points, it certainly would not have been sufficient regardless of what was delivered in person. No, I don't know what was delivered verbally, let's say, to those bullet points.

Q. Do you have a recollection that the bullet points did cover at least at a high level investment monitoring?

A. They did.

Q. So you mentioned earlier, Mr. Stone, that the DOL does not require a charter; is that correct?

A. They don't require a lot of things in explicit terms, no.

Q. You agree with me that ERISA does not require a charter of any kind?

A. I missed the last part of that.

Q. Do you agree that ERISA doesn't require a charter of any kind?

A. A what?

Q. A charter of any kind.

A. What did you say before that?

Q. ERISA does not require.

A. That's what I missed, sorry. No

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ERISA is not -- is not that explicit about a lot of things as I said a minute ago. It doesn't require a committee.

Q. Did every single one of the clients with which you worked at both PSA and Pavilion have a charter in place?

A. They did. I wouldn't allow them not to.

Q. When you say charter, do you mean charter or other equivalent document? I think you use that in your report.

A. It could be an equivalent document. Again, it depends on what it says in the equivalent document. The IPS typically reiterates some pieces of it, but there is a lot of things that an IPS would not include and the IPSs in this case do not include that would be essential to have in a charter. It could be covered in the plan document. Sometimes that happens. And that's fine. My preference would be for a charter, but you don't have to have a charter as long as the information is conveyed that needs to be conveyed.

Q. So let's go back to the 2015 IPS.

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A. Let me bring that up.

Q. Can you identify what is missing from the IPS that you would like to see in a charter document?

A. Well there are several things that are -- that jump out right from the get-go. So I don't know that IPS is going to help because it doesn't have anything in there about this. So a charter first of all should clearly delegate authority to either an individual or to a committee and by that it is going to be clear who the authority is that it's coming from. It could be the board, it could be from the CEO, it could be handled several different ways. It is going to also detail what authority that committee has. It is not just a matter of you can monitor the investments and this, that and the other.

Part of it is what authority don't you have. Where does your committee get circumscribed. In some cases a committee can make decisions about certain things and that is very clear. Again, that is the purpose of a charter. It is very clear that this is something that

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we can make a decision about. Here is something that over here if it happens we need to go and raise it to -- elevate it to another level.

So that's not covered in the investment policy statement.

Q. I don't want to interrupt you there, but if you're done with that particular thought I would like to jump in with a question whenever you done with that particular thought.

A. The point is, I think there is a number of areas that are not covered in the IPS that a charter should cover that makes the authority very, very clear. And I think that is a very important point.

Q. So I want to turn your attention to paragraph 28 of your report.

A. Paragraph 28?

Q. We are going to look at paragraph 28 of your report and look at the 2015 IPS.

A. All right, I have paragraph 28.

Q. You say, "The responsibilities of such a committee are customarily set forth in plan documents such as a committee charter and

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may include, among other things, 'establishing, interpreting and following investment policy statement'." Do you see that?

A. I do.

Q. Let's turn to page 4 of the IPS.

A. Okay.

Q. Do you see here that it sets forth the roles and responsibilities of the 401-K committee. And it sets forth exactly what the 401-K committee is going to do and that includes preparing and maintaining the IPS?

A. Yes, I see that.

Q. And then you see here in bullet point two you say, "Selecting investment options for the plan including the QPA."

A. Yes.

Q. Do you see here where it says, "Determine guidelines for selecting investment options and then provide sufficient asset classes with different and distinct risk return profiles so each participant may prudently diversify his or her accounts." Do you see that?

A. Hold on, I got my pages turned up

here. Where are you again now?

Q. I'm on page 4 of the IPS, bullets number 3 and 4.

A. Determine guideline and provide sufficient asset classes, okay.

Q. Do you see subsection 3 on page 28 of your report says "Monitoring the performance of each of investment options"?

A. Yes.

Q. Then do you see two bullets down it says here "Establish procedures for continuing monitoring and evaluating the investment options."?

A. Yes.

Q. Then do you see bullet point four where it says, "Appointing service providers for the plan including investment advisors?

A. Yes.

Q. Do you see the last sentence of this page it says "The committee also has the authority to obtain the services of any third providers as it deems necessary."?

A. Yes.

Q. Mr. Stone, you also state in your

report at what I'll say that you seem to have taken issue with the fact that the committee operated by consensus voting; is that correct?

A. Yeah, it is not -- I think it can be confusing. It's not that you can't do consensus voting, but sometimes in the not clear and particularly in this record it is not clear if they actually took a vote or what the results of the vote were in some cases. And what happens to somebody if you don't have a consensus.

That to me strikes me as a particularly potentially dangerous area to get into that you can't reach a consensus. So it is not -- I'm not saying that you can't use consensus voting, but I'm raising that I don't think it is the best approach to -- it is not the approach that makes sense to me to use given the fact that you might not have consensus, given the fact that in this particular case -- again, it is not clear that they took a vote on many of these cases. It just seems to -- something happened and it is not -- we took a vote, here is what we vote to

do, even if it was by consensus.

Q. Well is it required by ERISA, the DOL or anyone else that committee members take a vote on every decision?

A. Again, almost nothing that we're talking about is, quote/unquote, required.

This comes back to the prudent practice and what is the common and accepted practice in the industry today or during the time period that we are talking about. What are the things that make -- what would make this a group process. That is what I'm talking about.

And no, I'm not going to say they got to list of all of these 42 different things you should be doing because none of these existed -- most of them didn't exist at the time that ERISA was passed. So the Department of Labor hadn't come out with a list like that.

Q. So is it your testimony that the only prudent way to operate a committee is to have an formal vote on every decision?

MR. ROBERTS: Objection to the

form.

A. I don't think you have to have a, quote, formal vote on every decision. But I think that that is a practice that is generally accepted in the industry as a prudent way to operate because it does demonstrate that decisions were made and how they were made and who made them.

Q. Okay, did you identify any particular circumstances here where you couldn't determine whether or not a decision was made?

A. I don't see any record of votes in most of these cases.

Q. That wasn't my question.

A. I can't determine that if there was no vote. I can't determine what they decided.

Q. If the committee talked about an issue and together made a decision without a formal yes/no vote, but came together and made a decision and then the meeting minutes reflect that the committee made a certain decision, is that an unreasonable process in your view?

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A. How could say they made a decision if we don't know what they made a decision about.

Q. I'm representing to you that the meeting minutes state that the committee as a whole made a decision.

A. Okay, if they say that the committee made a decision, that is -- I don't think -- certainly it is not a way that I would prefer. It is not an imprudent thing in and of itself, no.

Q. Would it be your -- is it your testimony that the meeting minutes should reflect the individual votes of every committee member?

A. No, it doesn't necessarily have to reflect the individual members' votes. It could simply be the committee voted and everyone was in agreement or a majority agreed to remove this fund from watch or put it on watch or what have you. That would be, I think, sufficient.

Q. So I want to make sure that the record is clear.

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Your testimony is not that a vote is required by each committee member in order to reach a decision. Your testimony is that the record needs to reflect that a decision was made, whether by consensus or otherwise?

A. It needs to reflect that a decision was made and I think the clarification would be the best way to do that is through an actual vote.

Q. But it is not the only way; isn't that correct?

A. It is not the only way.

MR. ROBERTS: Keri, we have been going for over an hour, would now be a good time to take a break?

MS. ENGELMAN: Yes, let's take ten minutes.

THE VIDEOGRAPHER: The time is 9:09 and we are off the record.

(Recess Taken.)

THE VIDEOGRAPHER: The time is 9:26 and we are on the record.

BY MS. ENGELMAN:

A. Can I interject something before

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you ask me a question?

Q. Sure.

A. So I want to -- I had a chance to over this break to go through and look at a couple of the times that you asked me about earlier. And I misspoke earlier talking about, for example, the changeover was, because that was in my head the changeover was to the new FIA funds of Fidelity. That was actually 2022.

So the timeframe that I should have been working with was 2016. It began in 2016 through 2022 when they changed over to the FIAM version of the Fidelity funds. That would be consistent with what is in my report and I reference part of that on page 40, for example.

Q. So is it your testimony that your report does not go out beyond 2020; is that correct?

A. No, it goes through to the change over to FIAM in 2022.

Q. Sorry, I meant 2022.

A. Yes.

Q. It doesn't go beyond 2022; is that right?

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A. That's correct.

Q. It is your testimony that the change from the Freedom Funds to the FIAM funds happened in 2022?

A. Yes.

Q. What is the basis of your change in testimony regarding the 2016 time period?

A. I went back and looked through the report.

Q. Did you speak with counsel during this break?

A. I did not speak with him, no.

Q. If you turn to page 97 of your report.

A. Page 97?

Q. I'm sorry, paragraph 97.

A. I was going to say, page 97, I'm going to run out of pages. Paragraph 97 page 41, okay.

Q. You say that, "The committee relies solely on the plan's investment advisor to identify investments that became noncompliant with the plan's IPS that might otherwise be unsuitable for the plan." Do you

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see that?

A. I do.

Q. In that paragraph are you referring to specific instances that investments became noncompliant with the IPS or otherwise became unsuitable for the plan?

A. There were a couple of instances that were referenced and it's a question of finding the pages and everything where -- this is on page 43. If you look at 104 we start getting into that in terms of what -- this was where the whole thing where the -- Ascende was using or QPA was using a version their scoring system that was not in sync with the IPS and so I think the committee did not -- they didn't look on their own and they didn't get any other information and they were I think not getting good information, consistent information as to what should have been or would have been on watch and not on watch.

Q. So when you talk about that paragraph, you're referring to the three instances that you identify in I think paragraph 104 of the report?

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A. Page 104 --

Q. Paragraph 104?

A. Paragraph 104, you're right. And so the American Beacon Fund and DFA Fund and then the Freedom Funds as well. So those are the three that I call out in that particular instance, yes.

Q. Did you identify, in preparing your report, any other instances that you did not include in your report?

A. None are coming to mind at the moment.

Q. When you're talking about the QPA or Ascende at the time was using a scoring system, that in your view was inconsistent with the 2015 IPS; is that correct?

A. Correct.

Q. Is it your understanding that the scoring system was implemented sometime around 2017; is that correct?

A. So, yeah, there were three iterations of scoring systems. One was in place during the 2015 IPS and the next one was 2017 and then there was another change in 2019.

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What happened is, QPA was changing their systems to -- I think they upgraded or they changed the -- it sounds like they changed some of the software they were using. So they started using a different reporting standard than had been used in the past. I think this pretty much left -- unfortunately left the committee unaware of -- they didn't go back and say what about under this scoring system would this thing have been compliant before or not. You'd have to go through and look at every fund over multiple periods of time, which I did not do.

Theoretically you can go back and say maybe these were compliant under this system but they weren't under that system. But the changeover in the systems was I think a significant concern.

Q. Is it your understanding that there was a scoring system prior to 2017 in the IPS?

A. I believe there -- I'm trying to see -- I have to go back and look through my report, but I recall there was one standard --

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I don't know that they -- there was one standard that was being used in 2015 and then switched over to the pass/fail and then they went to this other point count system ultimately and that's when they got them to delay the score. So that's three in my mind.

Q. I want the record to be clear here. If you need to consult your report please do so. But if you look at the 2015 IPS there is no scoring system.

A. I guess the question is not the IPS, but what is being reported by QPA or Ascende in terms of how they came up with whether something was potentially on watch or not.

So not necessarily the scoring system in the 2015 IPS, because I don't think that was there, but I'm not sure that they -- you know, I guess that, to -- well, the 2015 maybe that is where it is. They didn't have Appendix B or there was something about an Appendix B missing and that is probably where the scoring was.

Q. Let's turn to page 47 of your

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report.

A. 47?

Q. The bottom of page 47.

A. Okay.

Q. It says "The scoring system implemented after 2017 conflicted with the monitoring standards established in the IPS."

Do you see that?

A. No, where are you reading?

Q. Does that refresh your recollection that your opinion is that the scoring system was implemented in 2017?

A. Where were you reading?

Q. The bottom of page 47.

A. Okay. The scoring system implemented -- you're talking about 3-I?

Q. Yes.

A. Okay, yes, the inconsistencies -- yes.

Q. So to make the record clear. Is your recollection refreshed that the scoring system was implemented in 2017 and not prior to that. So when we turn back to paragraph 97 of your report and the examples, the scoring

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system that you're talking about was the ones in place in 2017 and after that time period; is that correct?

A. That's correct. But we don't know what attachment B was to the 2015 IPS.

Q. Do you have any knowledge of testimony otherwise that says there was a scoring system in Appendix B?

A. No, I just know there is an Appendix B that is referenced in the scoring -- excuse me in the -- in there. We don't know what it says. But I reference there were a number of analytics that they were referencing in the document.

Q. Did you review the quarterly investment reports prior to 2017?

A. Yes, I looked at investment reports prior to 2017, yes.

Q. Did those reflect a scoring system of any kind?

A. I don't recall and I'm not looking at one in front of me. Even if they had an internal scoring system, it wouldn't necessarily be reflected in that report.

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Q. Do you have any knowledge about whether or not there was an internal scoring system?

A. I don't know what was in the appendix. I don't know what I don't know there. I'm just raising that as a question.

Q. Let's turn back to page -- paragraph 104 of your report, page 43.

A. Okay, I'm there.

Q. So you say, "Plan investments frequently ran afoul of the standards adopted in the IPS for assigning monitor and alert status, but escaped mention or scrutiny because the binary pass or fail hegemony of the scoring system was the sole monitoring approach undertaken by the committee." Do you see that?

A. I do.

Q. And that pass/fail system was implemented in 2017 to your knowledge?

A. I think so, yes.

Q. Then you testified earlier that these are the examples that you could come up with where there was an inconsistency between the scoring system and the 2015 IPS; is that

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right?

A. That's correct.

Q. If we look at the 2015 IPS.

A. Okay, I have it up

Q. You say, "The deference to the scoring system permitted the DFA Funds below peer median three-year Alpha and negative three-year Alpha Information Ratio to go undetected --

A. Where are you? What paragraph are you?

Q. I'm still on paragraph 104.

A. Okay.

Q. It says "The committee's indifference to the IPS investment watch list process and deference to the scoring system permitted the DFA Fund below peer median three-year Alpha and negative three-year Alpha information to go undetected in Q3, 2018." Do you see that?

A. Yes.

Q. So let's turn to in the IPS, the 2015 IPS. Let's turn to the investment watch list process page.

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A. Remind me again which page that is.

Q. Page 13.

A. I'm there.

Q. You're there, okay. Can you point me to where in this document it says that a below peer median three-year Alpha and negative three-year Alpha Information Ratio requires a monitor status?

A. The second bullet point I think speaks to I think what you're asking about which is the peer group median risk adjusted return is in the second bullet point.

Q. You agree with me that is one consideration that the committee may consider?

A. Yes.

Q. But does not have to consider?

A. It says may consider in the IPS.

Q. Then if we look at --

MS. ENGELMAN: Maria, can we pull up I believe it is the Q4, 2018 minutes.

(Exhibit 3 for identification, Q4, 2018 meeting minutes.)

A. Okay, let me open that.

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Q. So this is the quarter after the quarter that you referred in your report where you said this information was undetected; is that right?

A. Yes.

Q. Do you see here where it says "The DAF was place on monitor status as of Q4, 2018."?

A. Which page are you on?

Q. I'm on page, I guess this is page 3.

A. The DAF International Small/Mid Cap Value.

(Witness reviewing document.)

A. Okay.

Q. So you agree that the committee detected performance issues with this fund in Q4 2018?

A. Q4 they did, they are talking about short-term decline.

Q. Did you reference that document prior to forming your opinion?

A. I read this document, yes.

Q. You didn't include it in your report?

A. I don't know if there is a bullet

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point or if there is a footnote on it, I don't think there is, but I don't recall that at this point.

Q. Do you recall whether or not the American Beacon Funds were ever placed on monitor status?

A. I do not recall if they were placed on monitor status. They don't appear to have been placed on monitor status during this quarter?

Q. Right, okay. Stick with paragraph 104, the second to last sentence you say, "The Freedom Funds' negative information ratios over both three and five-year period were ignored in Q4, 2015." Do you see that?

A. I do.

Q. So again, you testified earlier that when you're talking about the scoring system in these paragraphs you're talking about the one that was implemented in 2017?

A. Well, this is referring back to 2015.

Q. Okay. But you testified earlier that the inconsistency with the IPS that you

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were speaking about in this paragraph relates to the 2017 scoring system. Do you recall that testimony?

A. I do, but I think that misspoke the fact that I also had an example from an earlier period.

Q. Okay, tell me -- point me to where in the 2015 IPS it requires a monitoring status for a negative Information Ratio on a three and five-year period?

A. Again I don't think it has that specifically to a -- it is one of the monitoring factors that you can look at and the committee did not seem to address it.

Q. When you came back from the break you clarified that the relevant period was from 2016 forward. Do you recall that?

A. I do.

Q. Do you know what month in 2016?

A. That would have been the beginning of 2016, so that would have included the Q4 report that was in February or so.

Q. February of 2016?

A. Correct.

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Q. So you believe the relevant time period cover January, 2016 forward?

A. It covers the period of that -- yes, from January of 2016 forward.

Q. So can you explain to me why you're providing an example in 2015?

A. Because it wasn't reported on until 2016. The committee would not have had the information until 2016 and that's the time when it would have been triggered.

Q. So if we turn to paragraph 117 of your report.

A. Okay.

Q. So if you turn to page 47, I want to go back to this. We are under a bullet 3-1?

A. Hold on?

Q. We looked at it earlier.

A. Okay.

Q. So we are talking about the scoring system implemented after 2017 conflicted with the monitoring standards established by the IPS. That is the bullet under which this section is created; correct?

A. Yes, 3-I.

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Q. Can we agree that the information in this section relates only to the time period of 2017 forward?

A. I don't know why we are would do that.

Q. Is that not what it says?

A. So that's what the -- I understand what you're saying. It's a grammatical issue about where it is placed in here as opposed to a substantive issue.

Q. It's not a grammatical issue. The heading is "The scoring implemented after 2017 conflicted with the monitoring standards established by the IPS."

My question is, the paragraphs that follow under that heading, will you agree with me these relate to the time period of 2017 forward when the scoring system was implemented? That is not grammatical, that is your text.

A. I understand what you're saying. Okay.

Q. So you agree?

A. I agree that's what the heading

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says, yes.

Q. That wasn't my question. Do you agree that the paragraphs that follow until we get to the second subbullet on page 50 relate only to the time period after 2017 when the scoring system was implemented, which I will represent to you is Q3 2017, if you don't know that?

A. Okay.

Q. So the first bullet point, it says "The IPS dictates that performance will be measured by comparing rates of return to appropriate market indexes and peer groups for me recent quarter, year to date, one year and three-year period." Do you see that?

A. I do see that.

Q. You saying that is what the 2015 IPS requires; is that correct?

A. That would be the 2015, yes.

Q. Then you say, "The scoring system evaluates performance against benchmark indexes for three year and five-year period and again peers for one, three and five-year periods." Do you see that?

A. I do.

Q. And you have highlighted and bolded -- I'm sorry italicized and bolded the five-year period. Do you see that?

A. I do.

Q. So your point here is that these scoring systems evaluated five-year performance against benchmark and peer groups, but the IPS did not call for five-year performance against benchmark and peer groups; is that correct?

A. Correct.

Q. Then you say, "In addition to incorporating an assessment of funds performance for a longer timeframe than the IPS". So again, you're criticizing the committee for looking at a longer time period than the IPS contemplated; is that correct?

A. Yes, I'm just saying it is inconsistent, yes.

Q. Is it your opinion that it is inappropriate for the committee to evaluate five-year performance against benchmark and peer groups?

A. No, I'm saying it is inconsistent

with the two don't tie together. And that is one of the things that I'm saying is there are places where these two don't tie together and I think that could present confusing information to the committee.

There is nothing wrong with a five-year number per se, but that is not a part of the IPS. So if you go and get a scoring based on a five-year number, you might come up with a different answer then what the IPS would necessarily dictate.

Q. Okay. So let's look at the IPS. Go back to the 2015 IPS. And what you're referring to is on page 12 of the IPS. Do you see that?

A. Let me get to page 12. Okay, yes performance evaluation, right.

Q. So the middle of the page it says, where I think you got your quote from. "Performance hopefully measured by comparing rates of return to the appropriate market indexes and peer groups for the most recent quarter, year to date, one-year and three-year period and longer periods where available." Do

you see that?
A. I do.
Q. And that would include five-year period?
A. Yes, it would.
Q. So that is not inconsistent with the IPS at all, is it?
A. No, it would seem to be consistent.
Q. Why did you state in your report that it was inconsistent with the IPS?
A. I probably misread it.
Q. Okay.
Would you agree with me that the quarter data would be captured by the one year data?
A. No, the quarter data is data -- I mean it would be subsumed under it, but reporting on the quarter is a separate reporting element.
Q. But it would be subsumed in the one year data, correct?
A. But you wouldn't know what part of it was, that's why you call it out separately.

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Q. Aside from the scoring system, do you know one way or the other whether or not the committee was receiving in the quarterly reports all of this information?

A. They were getting quite a bit of information in the quarterly reports.

Q. So did you review, aside from the scoring system, did you review all of the metrics that the committee was receiving in the quarterly reports?

A. I did look at the metrics they were receiving, yes.

Q. Did you form an opinion as to whether or not all of the metrics they were receiving were inconsistent with the IPS?

A. The metrics seemed fine.

Q. If we go to the second bullet it says, "The IPS investment watch list process identified performance below the peer median over three, five or ten years as a criterion to consider in placing an investment on monitor or alert status despite the ten-year returns not appearing anywhere in the scoring system." Do you see that?

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A. I do.

Q. Was the ten-year returns provided in the quarterly investment reports outside the scoring system?

A. I have to look at the quarterly report to confirm that. They probably were, but I have to look at the report to confirm it.

Q. So if we turn to the next page. It says, "The scoring system requires an investment manager to have at least a three-year tenure to receive a passing score for that component, but IPS cautions that any change to an investment manager could be sufficient reason to assign a fund to monitor or alert status." Do you see that?

A. I do.

Q. So wouldn't a three-year tenure encompass any change to an investment manager?

A. To get a passing score you have to have -- let me read it.

(Witness reviewing document.)

A. I'm trying to understand what you're asking me.

Q. So you say, "The IPS cautions that

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any change to an investment manager could be sufficient reason to assign a fund to monitor or alert status." Right?

A. Correct.

Q. And the scoring system requires that a manager have at least a three-year tenure; is that right?

A. Yes, it does.

Q. If there is a change --

A. That is not the same as any change. That could be -- again, the language is not clear. That could be something else.

Q. What is it in your view? How are these inconsistent?

A. You could have had a team of people and one of them left, that wouldn't change the fact that you still have a three-year tenure. But it could be if that was a person -- that that person left might be a reason that you'd want to consider monitor or alert status.

Q. Do you know whether or not the committee was receiving information about whether or not there was any change to the

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investment manager in the QIRs?

A. They were receiving that.

Q. So that is not inconsistent with the IPS; correct?

A. No.

Q. I want to turn your attention to some of qualitative criteria. Turn to paragraph 131 of your report.

A. Let me get there.

Q. Here you're talking about a March, 2018 report, a special report regarding the Fidelity Freedom Funds.

A. Yes, the Reuters report.

Q. This Reuters report dealt with withdrawals from the Fidelity Freedom Funds over the preceding four years; is that right?

A. Correct.

Q. Is it your -- did you review that report in connection with preparing your report?

A. Yes.

Q. Are you aware that -- am I correct that that report was dealing with essentially an overhaul of the Fidelity Freedom Funds that

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happened if 2014 that resulted in some riskier investments; is that correct?

A. Well, it was -- they changed their glide path and probably some of the underlying funds in 2014, so between 2014 and 2018 there was a substantial runoff of assets by people who got concerned about what the risk might be. There was an increase in equity depending on vintage between 1 and 20 percent and there were a few other, I think there are probably a few other tweaks that I don't remember off the top of me head.

In any event, Fidelity was undergoing substantial run off of assets that I think about 15 billion during that period of time. And other target dates series were gaining assets. So it was actually a rather fraught period at Fidelity, they were losing market share overall.

Q. You say in here towards the bottom of this paragraph, "The committee never reviewed or discussed these concerns much less deliberated their impact on the Freedom Funds standing in the plan whether as a result of the

plan's investment advisor bringing this report to the committee's attention or to the committee independently identifying significant negative reporting concerning the plan's most important investments." Do you see that?

A. I do.

Q. So did you review all of the minutes to determine whether or not the committee had ever discussed this report or otherwise discussed the underlying overhaul of the Fidelity Freedom Funds.

A. I did not see anything specific to the special report.

Q. What about the overhaul of the Fidelity Freedom Funds?

A. I don't recall at the moment. I wouldn't be surprised if they did have some conversation around that.

Q. Why wouldn't you be surprised about that?

A. Well, I would expect -- I would hope they would. I just wouldn't be surprised. It's a big event at the time.

Q. Why is it that you believe that

the special report should have been considered if in fact the actual -- if the committee was actually monitoring the overhaul itself and the impact on the plan?

A. Well, I would like -- again, I'm saying it ought to be in there, but I'm not looking at the particular minutes. I don't recall which minutes might have them in there. I would have to look at that.

MS. ENGELMAN: Maria, can you pull up Q1 2015 committee meeting minutes please.

(Exhibit 4 for identification, Q1 2015 committee meeting minutes.)

A. That was a Q4 '18?

Q. It should be Q1, 2015.

A. Q1, 2015, I got that. Okay.

Q. Do you see here where it says that "The Fidelity Freedom Funds were on monitor status in part due to the underlying -- the performance history of the underlying fund but also --

A. Where are you in this?

Q. Page 4.

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A. Page 4, okay. Fidelity Freedom Funds, okay.

(Witness reviewing document.)

A. So that's an addition to reason for monitoring added for that quarter.

Q. So do you agree that they were on monitor status and the committee was monitoring the enhanced guide path that changed in the latter part of 2013 which increased overall equity exposure between 10 percent and 20 percent across the various vintages?

A. But they waited nearly two years to do that.

Q. Well, I'm showing one set of minutes here. I'm asking if you agree that during this time period they were monitoring that?

A. They were monitoring the glide path change at this point, yes.

Q. Do you have any reason to believe sitting here they weren't monitoring during other time periods?

A. I don't recall seeing it on watch for other time periods and they said -- so it

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was added at this point due to do the enhanced glide path and maybe because it just want into effect -- I don't know if it shows up in prior minutes or not.

Q. If you were a -- let me ask you this. Are you suggesting in this report that the 2018 special report should have resulted in any particular action with respect to the Freedom Funds?

A. Again, I would go back to what I said before. I would think that it would first lead to an in-depth analysis as to what was going on with them. It would not simply be business as usual.

I think that would be to me the kind of thing that would raise the issue that to put them back on watch if they weren't on watch and to do a deep analysis of, in this case, going back to find out how much assets they were losing, what the impact of that was, what the -- why the concern about the putting 6 million participants at risk is kind of a hot headline to say the least.

I would think that they would

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want to go do a deeper analysis and that would show up in let's say the next quarter's reports.

Q. But other than that, any particular outcome that you were opining should have resulted as a result of --

A. It depends on what they found when they did that as to whether they would replace them or not.

Q. Turn to paragraph 135 of your report.

A. Okay.

Q. Actually, you know what, we are going to go somewhere else first and then to that.

So Mr. Stone, you're familiar with the target date deep dives that were presented to the committee?

A. Yes.

Q. It's your opinion they were presented annually from 2014 to 2024 other than 2017 that is in paragraph 137 of your report?

A. Correct.

Q. You say that the committee did not

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ask for those deep dives in your report. Do you see that?

A. Where are you?

Q. On paragraph 137 toward the end of the paragraph you say "Committee members did not recall requesting additional information or taking any action as a result of the target date deep dives."

A. Yeah, that was the Riddle deposition.

Q. Then the last sentence says, "These documents were not prepared at the request of the committee or tailored to the Quanta plan, but instead were distributed to each of Ascende's clients." Do you see that?

A. Yes.

Q. You were relying on Mr. Eagar's testimony that the committee did not request these deep dives?

A. Correct.

Q. Why does it matter whether or not the committee requested the deep dives or not if they saw them and considered them?

A. Well, I think it has had do with

their being kind of what they're asking for that they are in charge, they are the ones making the decision as opposed to something just being fed to them which was a document that was sent to every client. I think there is a difference.

There is obviously a difference if the committee says, you know, we would really like to see a deeper dive of the Fidelity Freedom Funds relative to a broad array of other target date funds. That's a very different fact pattern than if Ascende just simply says, we've created this, we thought we'd go over this and we thought you'd find this interesting.

Q. If the committee is receiving the information and considering the information in its analysis, why does it matter who requested it in the first place?

A. Because it's a motivational issue. They didn't seem to have any interest in finding out how others were doing. That was the point.

Q. You testified earlier that you

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provided similar reports to your clients; is that correct?

A. We did.

Q. Did every committee which you worked with ask for that information or did you just provide it?

A. One of them -- there is a myriad number of things that we provide as part of our service.

Q. You testified that you didn't tailor those specific documents to the specific plans; is that correct?

A. No, like I had said, this was just an add-on that we provided. But the point would be that if a client asked for specific information, that's different than if we just simply send them information or in this case if QPA sends them information.

Q. Did you draw a conclusion that the committees with which you were working were operating imprudently if they hadn't asked for this type of information?

A. That isn't what I said. It's a different circumstance in terms of, if you ask

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for something you're showing more, obviously, more interest in being proactive about things. And all I'm saying in this particular case is the committee did not proactively ask for this information. Not everybody that I worked with asked for it either. Some did, some didn't. But I'm just saying that is a different fact pattern.

MS. ENGELMAN: Can you pull up minutes, Maria, please.

(Exhibit 5 for identification, Q1 2016 Meeting Minutes.)

A. Which meeting minutes is that?

Q. It should be the latest document in Exhibit Share, Q1 2016.

A. Which document?

Q. Q1.

A. Q1, 2016, I got it.

Q. If you turn to the bottom of the page.

A. Which page?

Q. Target date fund and it says, "As the meeting concluded, AWAI" which is Ascende at that point in time "and the committee

discussed an overview of the Fidelity Freedom Funds. The committee expressed interest in conducting a due diligence project to review the Freedom Funds versus some industry competitors."

Does that refresh your recollection that the committee actually requested these types of analysis?

A. It sounds like they did request some additional information.

MS. ENGELMAN: Maria, can you pull up 2016 deep dives.

(Exhibit 6 for identification, 2016 Deep Dives.)

Q. Mr. Stone, I point your attention paragraph 39 of your report.

A. 39, okay.

Q. Here you talk about what responsible plan fiduciaries should do when assessing target date funds. Do you see that?

A. Yes.

Q. And in the middle of the paragraph you say, "The fiduciaries gather and evaluate essential information about the available

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options such as historical returns and risk adjusted returns, fees, expenses, and differences in their glide path, asset classes and underlying investments." Do you see that?

A. Yes.

Q. So if you pull up the target date funds that should be in Exhibit Share which are the 2016 deep dives.

A. Yes.

Q. And I represent to you that was presented at the Q4 2016 meeting. If you turn to page 5 of that document. Do you agree that that shows the various asset classes?

A. This is the glide path.

Q. The glide path, okay.

A. Not the various asset classes.

Q. Okay, sorry I'm looking at the wrong thing.

Do you see it shows the various glide paths of various target date funds?

A. Maybe I'm looking at the wrong one. I'm looking at Freedom Funds glide path on page 5.

Q. Okay, hold on one second.

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A. You're looking at the glide path comparison all?

Q. I'm looking at equity fund split of target date funds on page 5 of the Freedom Funds. Do you see that?

A. Yes. "The Freedom Funds, The International Equity Exposure, US Equity Exposure, Bond Exposure."

Q. If we go to page 6, it looks at the glide path of the Fidelity Freedom Funds as compared to all the comparators in this report?

A. Yes.

Q. And then the next page looks at glide path to only and the page after that looks at glide path comparison through only.

A. Correct.

Q. The next page looks at the composition percentage breakdown of the various vintages of the Fidelity Freedom Funds.

A. Yes, it's a high level asset allocation, yes.

Q. Then if we look at the next page, it looks at the Freedom Funds returns on three years.

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A. Correct.

Q. Then if we look at next page it looks at one-year returns compared to the various comparators.

A. Correct.

Q. Then if we look at the next page it looks at three-year returns compared to the various comparators.

A. Yes, it does.

Q. Then the next page looks at the five-year returns compared to the various comparators.

A. Yes, it does.

Q. Then the next page looks at the growth of the Fidelity Freedom Funds, certain vintages.

A. Yes.

Q. The next couple of pages looks like that and then we get to page 16 and does this look at the risk adjusted returns?

A. Let me get to that.

Q. On a three year and five-year basis compared to the comparators?

A. Yes.

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Q. So does page 17 and so does page 18.

A. Okay.

Q. And page 19 looks at the allocation of the underlying funds for the various vintages.

A. Yes.

Q. And page 20 looks at the three-year comparison compared to best benchmark.

A. Yes.

Q. And the next page looks at five-year comparison compared to best benchmark.

A. Correct.

Q. And the next page looks to be -- the next couple of pages looks at expense ratios.

A. Yes, it looks at returns.

Q. You're correct.

It has a summary of returns compared to benchmark and annualized and net expense ratios. So it's a summary of the various vintages?

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A. These is all the various sub funds within the vintage, yes.

Q. Would you agree with me that this deep dive is consistent with type of information that you would expect the committee to have in conjunction with paragraph 39 of your report?

A. I think it is good information for them to have, absolutely.

Q. So if we look at --

MS. ENGELMAN: Maria, can you pull up fourth quarter 2016. I'm not sure, I think it is Exhibit 5, Mr. Stone.

A. You want me to go to Exhibit 5.

Q. Hold on a second. Let me make sure this is right. Fourth quarter -- it should be the May 10, 2017 meeting minutes Maria..

(Exhibit 7 for identification, May 10, 2017 meeting minutes.)

Q. While you wait for that to come up. So in paragraph 138 you opine in the first sentence, "It's unclear if and how the committee actually considered the data presented in the TDF deep dives." Do you see

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that?

A. Yes.

Q. If you look at these meeting minutes and you go to the end of them -- do you have them in front of you?

A. No they haven't come up.

Q. May 1st, 2017.

A. Okay, now let me open it, okay.

Q. At the bottom of the page, the bottom of the document.

A. Okay.

Q. It says, "The committee reviewed a target date fund comparison which analyzed the current Fidelity Freedom Funds versus leading industry competitors. Discussion covered the glide path construction and philosophy, terminal allocation point of the glide path fees and diversification. The committee considered like styled active managers, index managers as well as blended managers using active and passive underlying investments in their target date strategies. Upon their review the committee remained pleased with the Fidelity Freedom Funds. It did not note

sufficient reasoning to change target date providers at the time." Do you see that?

A. I do.

Q. So do you agree with me that in these meeting minutes it is clear that the committee considered the data present in this target date deep dive?

A. They considered the information in the target date deep dive, but it is kind of a -- it actually doesn't get to the issue of whether these particular funds are appropriate for their participants. And this is the kind of thing that we talked about earlier about the minutes, you read this and I have no idea whether they know or have any idea whether these target date series does or does not work for the participants.

It is just a laundry of list of fees, glide path, diversification, which is all stuff that you have to look at but that doesn't answer that question at all. It doesn't seem to go what a participant -- are participants generating the kind of wealth they need which would be what I would hope to see in addition

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to the information that is here. It is just not there.

Q. So what you would expect to see is information about how the Fidelity Freedom Funds are generating wealth for the plan participants?

A. How it is working for the participants. In other words, this could have been for any of the 5,000 different plans out there. This is what I'm saying, it could be rather anodyne. This doesn't tell me, is this the appropriate choice for their plan and if so, why do they think it is the right choice for their plan.

They are just saying it's -- that they looked at the fees, they looked at diversification, they looked at the allocation, the construction, all of which is good stuff. All of which they should definitely be doing. But nowhere does it tell me that they have tied that to their own plan and how that works.

Q. So it doesn't tell you in the minutes they tied it to their own plans, but the minutes reflect that they reached a

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conclusion after looking at all of the available information that it was sufficient for their plan; is that correct?

A. Well, no, that is not quite what I said. It tells me they probably didn't consider whether it works for their participants. That is what I take away from that.

It tells me they looked at all of this information, they looked at a lot of data and a lot of analytics, which is good, but the point of looking at all of that information is to tie it back and realize is this working for our plan. It this working for our participants. That's not here and that's, I don't think that is ever in any of these things that I've seen.

That is -- people are -- they're ticking all the boxes as opposed to kind of actually -- they are kind of missing what the punch line is here which is, is the plan working well for our participants and that answer is not here.

Q. And that answer can change depending on the plan and the plan's objectives; is that right?

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A. It could, it could depend on the plan's objectives, it could depend on the plan's demographics. But like said, in this case they are looking at all the stuff that everybody gets excited about, which is all the nice color charts and graphs and everything, but what do you do with that information. All of that stuff is for a purpose and that purpose is to help you determine is this appropriate for our plan. Is this working for our participants. Are they getting to where they want.

If the objective of the plan, which one of the objectives is to have people be able to save the appropriate amount of money for retirement. This doesn't answer that question. This just tells me they looked at a bunch analytics.

Q. Okay. Going back to the meeting minutes. Did you review any of the materials that were appended to or attached to the meeting minutes?

A. I did. I don't recall exactly what I looked at at the moment, but yes, I did.

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Q. Do you consider the materials presented at the meeting such as the quarterly investment reports to be part of the meeting minutes record?

A. Yes.

Q. Let's go paragraph 135 of your report.

A. Okay, 135.

Q. So you say here that "The committee failed to recognize and appropriately scrutinize the persistent failure of the Freedom Funds to outperform its benchmark." Do you see that?

A. I do.

Q. It says, "Appendix A to the 2015 IPS identifies S&P target date indexes as the appropriate benchmark for evaluating TDF performance." Do you see that?

A. I do.

Q. Then it goes on about, "There is quarters bracketing the start of the class period from Q4 2015 through Q1 2017, the majority of the Freedom Funds vintages failed to generate returns that exceeded the

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corresponding S&P target date index on a five-year basis while all but Q1 2017 the Freedom Funds similarly failed that standard on a three-year basis." Do you see that?

A. I do.

Q. So then you go to the next page, there is a table one in your report.

A. There is, yes.

Q. Did you prepare that table?

A. No, I asked counsel to prepare that report.

Q. Did you check to make sure it was accurate in terms of the underperform versus outperform on three year and five-year performance relative to benchmark?

A. I went and spot checked it. I didn't check every single vintage against every single period.

Q. How did you spot check it? What materials did you consult?

A. Go back to Morning Star and I also get -- there was a couple of others too, I think.

Q. We already talked about the fact

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that the IPS asks for -- looks at performance on a comparison to benchmark but also comparison to peer group; is that correct?

A. Correct.

Q. You didn't include comparison to peer group here, why is that?

A. Because it is -- I think this demonstrates one element of underperformance. There is probably an infinite number of things that you could do on those things. So this is one example. It is not a matter of intentionally -- well, it was intentionally leaving it out, but it was not because it somehow or another told a different story.

Q. What was end of that, I didn't catch it?

A. I said it was not left out because it told a different story. I think this tells the story as I wanted to tell it. It underperformed its benchmark, period. I thought that was enough for purposes of what I was trying to say here.

Q. So what is it that you're trying to say here?

A. That they consistently

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underperformed their benchmark over a three year and five-year period through the timeframe that we are looking at here which is Q4 of 2015 into where they actually started to outperform which is Q1 2017.

Q. So did you look at performance compared to benchmark after Q1 2017 of the Fidelity Freedom Funds?

A. I had look at some of it, yes, and the performance was better.

Q. Do you know over what time period the performance was better?

A. I can't say off the top of my head right now, no.

Q. Is it not -- is it common for investment funds to have fluctuating performance during different time periods?

A. It is and we talked about that, but we also talked about that that doesn't mean that you don't take a very deep look at underperformance and determine whether or not it is still an appropriate choice for you.

Because we don't know -- we are ex post here, we know that the funds performed

better, but that's great. After the fact is great. At the time that they were looking at this we have underperform, underperform, underperform pretty much across the board for an extended period which goes back to the conversation I know we had several times which is why weren't they taking a much deeper look at this at that particular time not knowing what the future would hold. Okay, nobody knows that.

Q. In this table here you don't state the level of underperformance compared to benchmark, do you?

A. Not in this table, no.

Q. But you agree with me that that is an important factor that the committee needs to consider when evaluating whether something is actually underperforming or not?

A. It was underperforming. The question is the percentage underperforming is certainly something that you could take a look at and I would expect they would take a look at that.

Q. And they would also take a look at

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whether or not the performance was improving during tis time period?

A. You would take a look at all of this, yes.

MS. ENGELMAN: Can we take a ten minute break and hopefully come back and wrap up.

MR. ROBERTS: Okay.

THE VIDEOGRAPHER: The time is 10:40 and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 10:50 and we are on the record.

BY MS. ENGELMAN:

Q. Mr. Stone, do you recall or do you know GlassBridge Enterprises was a client of Pavilion?

A. I'm sorry, who was?

Q. GlassBridge Enterprises?

A. Glass, G-l-a-s-s?

Q. Yes.

A. I've never heard of them.

MS. ENGELMAN: Maria, can we pull up the 5500 for GlassBridge, the 2017.

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(Exhibit 8 for identification, GlassBridge 2017 Form 5500.)

A. I'm opening it now.

Q. Can you go to Schedule C which is on page 6 of the document?

A. Okay.

Q. First, actually let me start at the top of the document. This is a 5500 for the GlassBridge Retirement Investment Plan, do you see that?

A. Yes, I do.

Q. It is the period January, 2017 to December 31st, 2017, do you see that?

A. I do.

Q. If we go to page 6 of the document.

A. Yes.

Q. It says Pavilion Advisory Group and under there it says relationship, investment advisory.

A. Yes, so on the following page after that what you see is Jeffrey Slocum & Associates which was a firm that we bought based out of Minneapolis. So that is why I

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didn't recognize that name because that was a Slocum client and 2017 sounds like the time that we actually close that deal and taken them over as a client.

Q. So when you took them over as a client, did some of their investment advisors come over to Pavilion as well?

A. Yes, most of them did.

Q. Did you interact with those folks?

A. I did interact with them. Mostly -- occasionally I saw a few of them, but I never went to the Minneapolis office, so I didn't meet all the people that worked there.

Q. Were you an executive director of Pavilion at this time?

A. I was.

Q. So you feel that the investment advisors who were serving in the 321 capacity were fulfilling their fiduciary obligation? Any reason not to believe that?

A. I'm sorry, repeat that I couldn't --

Q. Do you believe that the 321 investment advisors that were employed by

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Pavilion at this time were fulfilling their fiduciary obligation?

A. The ones that I knew were certainly. I can't speak to people that I didn't know and I think I kind of carved that out earlier. But to the extent that I knew people, I was absolutely certain they were doing the correct thing.

I didn't have a -- I mean some of these -- I don't know who -- I don't know who was responsible for this relationship. So while I would like to think they certainly were doing exactly what they should be doing, I don't know what they were doing because I wasn't -- I don't even know it we integrated them into our reporting system at this particular time, because you have part of the fee went to Jeffrey Slocum & Associates, so that would have been probably just earlier in the year and then the rest of it would have been Pavilion later in the year. So I would guess that we may not have even switched over the reporting system at that point.

Q. So would it have been your

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expectation that when Pavilion essentially, I guess, acquired this business, that it ensured that the individuals who were working on the clients that were now Pavilion were fulfilling their fiduciary obligations?

A. Yes, I would expect that they would do that. How that was validated, I'm not sure.

Q. If we turn Schedule H of this document which I will tell you the PDF number in a second.

A. I'm there.

Q. You see here as of December 31, 2017 this plan offers the Fidelity Freedom Funds K Class?

A. I'm on Schedule H. Isn't H the one that you want to be in?

Q. Page 41 of the document, Schedule H line 4-I.

A. 4-I, okay. I'm missing it somewhere. I'm not sure where you're looking.

Q. On page 41 of 43.

A. 41 of 43. Okay way down there. Hold on. Almost there. Okay, I'm on page 41

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of 43.

Q. Do you see where it says the Fidelity Freedom Funds and the various vintages K Class was offered in this plan?

A. I do.

Q. As of December 31st, 2017?

A. Yes.

Q. Do you see that?

A. Yes.

Q. Do you agree with me that the Pavilion advisors would have had the same performance information that you identified in table 1 paragraph 135 of your report?

A. I would assume so, yes.

Q. You agree with me that this plan committee did not elect to remove the Fidelity Freedom Funds as of that time period?

A. As of that time, that is correct.

Q. You have no reason to believe that Pavilion as a 321 advisor was acting imprudently or not fulfilling its fiduciary obligations?

A. I would not think that the firm was acting imprudently. I don't know who the advisor was. As I said, this was as we were

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transitioning people over. I can't speak to what they did or do not do. But I would assume because the firm had a sterling reputation and everything, that they were doing what they should be doing. And I also don't know demographics of this plan, so I don't know how that would have fit in this particular case because I didn't recognize the firm's name at all.

Q. So would you agree with me based on the information in table 1 of your report, that that information does not necessitate a removal of the Fidelity Freedom Funds from a plan?

A. I said what it necessitated was taking additional action to understand the reasons for the underperformance. That might or not have led to the removal of the funds depending on what was discovered.

Q. You agree with me that at least this plan did not discover anything that warranted removal as of December 31st, 2017?

MR. ROBERTS: Objection.

A. I can't speak to what they knew

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or didn't know, because I don't know these people. So I'm not going to put myself in their place. They chose to keep the funds as of this point, that's the only information that I know of at this stage.

MS. ENGELMAN: Maria, can we look at 2019 GlassBridge.

(Exhibit 9 for identification, GlassBridge 2019 Form 5500.)

A. Okay, I'm bringing it up.

Q. So this is for the year -- let me know when you have it.

A. Okay, I'm on the first page.

Q. This is for year January, 2019 to December 31st, 2019. Do you see that?

A. Yes.

Q. If you go to page 3 of the PDF it shows that Pavilion Advisory Group is the investment advisor?

A. On page 3?

Q. Sorry, it's page 6. Page 6 of the PDF. Schedule C.

A. Yes, Pavilion Advisory Group, yes.

Q. If we go back down to Schedule H

which is page 37 of 38 all the way toward the end.

A. 37 of 38. Okay, I'm on this.

Q. You see as of this time period this plan is still offering the Fidelity Freedom Funds Class K. Do you see that?

A. Yes, I do.

Q. Those are the same funds that are offered in this plan; is that right?

A. That's correct.

Q. Through May of 2019 you were an executive director at Pavilion; is that right?

A. Yes, actually it had switched over to Mercer.

Q. What time period?

A. Well Mercer acquired Pavilion on November 30th, 2018.

Q. Got it. But you were still there in an executive director role until May of 2019 I thought you said?

A. No, I had no client relationship, I had no responsibilities and I was living in Spain, but I was still on the payroll, yes.

Q. During this time period, this 2019

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time period where this plan is still offering the Fidelity Freedom Funds, that is after the March, 2018 special report that you highlighted in your expert report; is that correct?

A. That's correct.

Q. Mr. Stone I would like to --

MS. ENGELMAN: Maria, can we look at the 2016 Holland & Knight.

(Exhibit 10 for identification, Holland & Knight 2016 Form 5500.)

Q. Mr. Stone, were you an investment advisor for Holland & Knight?

A. I was not.

Q. Do you know if Pavilion was?

A. That sounds familiar.

Q. Do you know who the investment consultant, the 321 investment consultant was for Holland & Knight?

A. I do not.

Q. Do you have any reason to believe sitting here today that the investment consultant from Pavilion working on the Holland & Knight plan did not fulfill the fiduciary obligation of a 321 advisor?

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MR. ROBERTS: Objection.

A. I don't have any reason to think that, no.

Q. Do you have any reason to think that the Holland & Knight committee was acting imprudently in any way?

A. I don't know anything about that, so I can't speak to them.

Q. Do you have the 2016 Holland & Knight 5500 in your Exhibit Share?

A. Let me see if it is loaded. Yes, it is there. Let me open it.

Q. So this is for the period January 1st, 2016 to December 31st, 2016. Do you see that?

A. Yes.

Q. If we look at page 36 of the PDF.

A. 36 of the PDF, okay.

Q. Schedule C.

A. Yes, okay. I'm on page 36 of Schedule C.

Q. Do you see there that the Pavilion Advisory Group is the Holland & Knight plan's investment advisor?

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A. I don't. On 36 that is not -- hold on. Yes, okay, the previous page, I see it.

Q. Then if we go to page 88 of 89.

A. I'm there.

Q. Do you see that this plan offered the Fidelity Freedom Funds K target date funds with is the same funds that were offered in this plan?

A. I do.

MS. ENGELMAN: Can we go to 2017, Maria.

(Exhibit 11 for identification, Holland & Knight 2017 Form 5500.)

A. I'm loading it. Okay, I think it is open.

Q. So this is the 5500 for the Holland & Knight Profit Sharing Plan and Trust. This is for the January 1st, 2017 to December 31st, 2017 time period. Do you see that?

A. I do.

Q. Then if we go to, again, to page 36 of my PDF where it shows that Pavilion

Advisory Group is the investment advisor.
A. Give me a moment. Okay, yes, one of several consultants apparently.
Q. Then if we go to Schedule H --
A. If I could just stop you there for a moment. I have an a question.
Q. Sure.
A. So I mean there is four different consultants listed here, no five. Five -- six different consultants listed here and so I'm not sure what Pavilion's role was here as the investment advisor. They were getting only $15,000, so that is not a typical advisory fee. So I'm not sure if they just take -- they had the relationship before. I'm not sure what the role was for Pavilion at that particular time.
I wanted to make a note of that because somebody else -- there a couple of somebody else's that were making considerably more money as consultants on this plan at this particular time. And there is enough advisors, strategic advisors on this plan at the same time.
Q. If we go to Schedule H.

A. Okay, I'm on Schedule H.

Q. It is my page 81 of 83.

A. 81 of 83. Okay.

Q. Do you see here that the Fidelity Freedom Fund K Funds were offered in this plan?

A. I do.

Q. And that Pavilion would have had access to the same performance information in table one of your report?

A. Yes, but I'm not sure who was the -- who was actually driving the ship in this particular case because there are like five consultants and at least two investment advisors as they're broken out on Schedule C.

I don't know that -- I don't know what they were providing. But for $15,000 they were not providing quarterly reporting. So I think it was one of the other -- I'm not saying these guys didn't have the K Funds and all of that, I get it. I don't think Pavilion has probably much of anything to say on whatever was going on with that plan in this particular year because it looks like other people were providing advice to the plan.

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Q. Do you know one way or the other sitting here today what role Pavilion played?

A. No, but for $15,000, they weren't the investment advisor. I could tell you that.

Q. Mr. Stone, you testified earlier that you were the 338 investment advisor to Packaging Corporation of America; is that correct?

A. That's correct.

Q. What was the timeline that you were the 338 advisor?

A. We are talking about the 401-K or the define benefit?

Q. The 401-K.

A. 401-K would have begun sometime during 2018 and I'm going to -- I'm not sure of the exact timeframe. It was probably during the second quarter that they began to convert over and I actually handed that relationship off to one of my colleagues at the point that they finalized the decision and signed the agreement to have us being a 338.

Q. Prior to that were you personally the 321 advisor?

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A. 321, yes.

Q. So during what time period were you the 321 advisor?

A. So I had worked with Packaging Corporation of America beginning in 2005, if I remember correctly, but I don't think we took over the main plan until 2007. I did a couple of projects for them back in like 2005, 2006. And I think that -- and worked with a subsidiary and took over the main 401-K plan as advisor I think in 2007.

Q. Do you recall what target date funds the Packaging Corporation of America offered?

A. I do not.

Q. Would it refresh your recollection if they offered the State Street Fund?

A. That sounds like that could be correct, yes. That sounds correct.

Q. Do you recall if they were the plan QDIA?

A. I believe they were.

Q. Does that mean that you would have provided heightened scrutiny, as you used that

term, with respect to the State Street Fund?

A. Yes.

Q. Would you have recommended their removal -- in a 321 capacity would you have recommended the committee remove those funds if you deemed them to be imprudent?

A. Of course.

Q. As a 338 advisor it would have been your fiduciary obligation to remove those funds if they were imprudent in your view?

A. Correct.

Q. Do you have a recollection of when the plan offered the State Street target date funds?

A. I believe they offered them for a number of years, but I can't speak to when they went into the plan and I'm not sure what happened after Pavilion became the 338 and I handed the relationship off to one of my colleagues as part of my kind of exit strategy.

So I don't recall if any -- because that was actually at the time, as you said, it was after we had signed the agreement and we were in the process of evaluating

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whether any fund changes were going to be made by us as a 338. But I was not involved ultimately in whatever changes did or did not take place.

Q. Sorry, just remind me, when was the time period when you handed off the relationship?

A. I believe it was the second quarter of 2018. I'm not a hundred percent sure, but that is pretty close.

Q. Do you recall what the benchmark was for the State Street funds?

A. I do not off the top of my head, no.

Q. Would it refresh your recollection that the State Street Fund offered or have the chosen benchmark as the S&P 500?

A. It would be the S&P target date index fund, right?

Q. Correct.

A. Not the S&P 500.

Q. The target date Intex fund; correct.

A. That is a typical index that's

used pretty much across the board.

MS. ENGELMAN: Maria, can we pull up the next document.

(Exhibit 12 for identification, Document titled State Street Fund versus S&P.)

Q. Let me know when you have it, Mr. Stone.

A. What is the document?

Q. This document is one that we put together and I will explain it to you.

A. The last thing I'm showing is still the Holland & Knight. Okay State Street Fund versus S&P PDF.

Q. We went and looked at the performance of the State Street Fund as compared to the benchmark over the time period that you served in both a 321 capacity and also a 338 capacity. Although I know post 2018, second quarter 2018 that is not necessarily the case.

I understand that you don't have the underlying metric, but assuming this analysis is correct, will you agree with me

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that starting in Q3 2016 the State Street funds are underperforming the index on a three year and five-year basis?

A. Q3 in 2016, right?

Q. Correct.

A. Okay, so there were a couple of vintages that appear not to have been, but there are several that -- most of them were underperforming at that particular time, yes.

Q. The same is true for Q4 2016?

A. That would be correct.

Q. The same is true for Q1 2017?

A. I have to go to the next page. Three year basis, yes.

Q. And on a five-year basis as well?

A. Yes.

Q. For Q2 2017 would you agree they are underperforming the benchmark on a three year and five-year basis?

A. I would.

Q. And for Q3 2017, would you agree the State Street funds are underperforming the benchmark on a three year and five-year basis?

A. I would. These are index funds,

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so you would expect them to be underperforming by definition.

Q. For Q4 2017?

A. Again, most of them are underperforming at that particular point.

Q. Q1 2018?

A. Okay, most of them are underperforming at that point. And again, my point still stands which is they are index funds so you would expect them to be underperforming this benchmark.

Q. For Q2 2018 the same?

A. Same thing.

Q. And Q3 2018 same thing?

A. Yes.

Q. And during this time period, so that is, I'm going to count, nine quarters of underperformance on the three year and five-year basis as compared to index. Do you agree with me?

A. As compared to the S&P target date index, that's correct. These are passively managed funds. Again, it is not exactly a surprise that they're underperforming a little

bit.

Q. But you agree with me these funds were not removed from the plan?

A. They are going to be evaluated differently as a passive fund. They are going to be evaluated differently. No, they weren't removed from the fund. But I'm saying the evaluation would also be different as well.

Q. Tell me about that. Why would the evaluation be different for a passive fund?

A. They are passive, they are not actively managed. All they are doing is tracking a benchmark and the only difference here is the benchmark. The S&P target date index and I don't have that information in front of me, but I'm making a good educated guess, is the allocation in the target date index that they are being measure against, the allocations could be slightly different than the actual State Street target date allocations themselves.

Also State Street might have been using a different -- the funds that they were using, the asset allocation itself might

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have included or not included all the different asset categories that are in the S&P target date series.

In addition to that, you have transaction costs in the State Street. So you have several things that create a little bit of noise in the data when you look at that because they are passive funds. All they are doing is mimicking an index and they did a very good job of mimicking that index.

When we did the analysis, we would go back and look at, you know, what are they doing anything that says they are not tracking their index. If that they are -- that they are not doing what they should be doing. And the funds were inexpensive so I think the evaluation is, not to say that you wouldn't have the conversation with the committee about these versus this benchmark, I think you would. But it is very different than how the way that you evaluate actively managed funds. Totally different.

Q. Do you have a specific recollection of having conversations with the

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committee in a 321 capacity regarding this performance?

A. I don't recall specific conversations I would have had years ago with this -- in regard to any quarterly performance or whatever with this particular client. No, I don't remember that.

Q. In a 338 capacity do you recall specifically you tracking down sort of understanding what the noise was and understanding what was driving this underperformance?

A. This would have been up to my colleague who replaced me. He was heavily involved in the evaluation process as to whether they were going to continue with the State Street target date funds or not and I have no idea what the outcome of that was.

Q. You were a 338 advisor prior to Q2 2018; correct?

A. In '17 I was a 338 for the defined benefit. In 2018 I was briefly the 338 for the 401-K because I handed it off during -- as we got the agreement signed. So I would have --

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technically it was probably a 30-day period that I was actually the 338 since we were handing it off.

Q. Your partner, you don't know what happened -- you don't know what analysis they did exactly?

A. First of all, it wouldn't have just been him. It would have been an entire staff of people that would have been looking at whether or not State Street was in our high conviction list. If State Street was in our high conviction list, if they were in our high conviction list, we are probably would have kept it.

It's a passive choice. It is generally -- it has been very good doing what it does. And the allocation of the State Street target date funds is -- for example, passive funds can be a little tricky. State Street, their target date funds look a little bit different than Blackrock which looks a little different than Vanguards. They are all passive, they all track index, but they are tracking in some case the same index and in

some case different indexes.

And they also may be making other decision under the covers. For example, Vanguard does not go and invest in small and mid cap international funds because they said it dries up transaction costs. Well, State Street does as far as I know and I'm pretty sure Blackrock does as well.

There is some noise in those numbers and I don't think -- you can not reasonably compare a passive index fund to an actively managed portfolio in target date or for that matter any other category and say well, gee, the index fund is underperforming.

If it is doing what it is supposed to be doing which is tracking its index, then it is doing exactly what it is supposed to be doing and you don't need to do anything else.

MS. ENGELMAN: If I could have five minutes, I likely can wrap up, I just need to look at my notes.

THE VIDEOGRAPHER: The time is 11:26 and we are off the record.

(Recess taken.)

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THE VIDEOGRAPHER: The time is 11:41 and we are on the record.

BY MS. ENGELMAN:

Q. Mr. Stone, just a couple of other things and then we will wrap up.

Are you aware that Packaging Corporation of America and the investment committee of the Packaging Corporation of America was sued in connection with the choices of the fiduciary committee?

A. No, I was not the aware of that. Can you tell me what date that was?

Q. I can. The complaint was filed in June of 2022.

A. Okay.

MS. ENGELMAN: Maria, can we pull up the Amended Complaint, please.

(Exhibit 12 for identification, Amended Complaint filed in June of 2022.)

Q. Do you have that, Mr. Stone? Let me know when you do?

A. No, it hasn't loaded yet. Oh okay, it just came across.

Q. So this was filed in -- this is

DONALD C. STONE

the Amended Complaint. This was filed in June of 2022. I think the class period goes back to at least 2016. So that is the time period when you were serving as the 321 consultant; is that right?

A. That would be correct.

Q. We don't have to review the whole thing, but I will represent to you that it challenges breach of fiduciary duty claims based on the recordkeeping fees that were paid to the record keeper, the managed account services as well as the prudence of three different investment options.

A. Okay.

Q. So the investment options are, they are listed throughout the complaint, but if you go to page, I guess paragraph 151 there it is a chart and the Invesco Diversified Dividend Fund, The Metropolitan West Total Return Bond Fund and the Victory-Integrity Small Cap Value Fund.

A. Okay.

Q. Do you have any thoughts on whether or not these three investment options

DONALD C. STONE

were actually prudent options available to plan participants?

A. I have not look at those investment options in a long time, so I really have no thought one way or the other at this particular point.

Q. Do you have any thoughts about whether or not the recordkeeping fees paid to the record keeper by this plan may have been too high?

A. I would very surprised. Again, I haven't looked at the specifics of the complaint, but we negotiated lower fees for every single client that we ever had except one over -- as PSA, so over that 12-year period, only one client were we not able to reduce fees for.

That was something that we spent a lot of time doing. So I would be very surprised, but I don't know, like I said, I don't know anything about the complaint.

Q. You weren't involved and you weren't deposes in this matter or otherwise involved in any way?

A. I have not been contacted by

DONALD C. STONE

anybody.

Q. But you understand that on the date of this complaint essentially you're advice to the committee was at issue in this lawsuit?

A. Yeah, I understand that, yes.

MS. ENGELMAN: I don't have any further questions for Mr. Stone.

MR. ROBERTS: Nothing from me either. Thank you, Mr. Stone.

THE WITNESS: Okay.

(CONTINUED ON NEXT PAGE.)

DONALD C. STONE

THE VIDEOGRAPHER: If there are no other stipulations I will conclude the video recorded for this proceeding.

So here ends media unit number 6, this concludes the video recorded virtual remote deposition of Donald C. Stone taken by the Defendants on Friday, November 1st, 2024. The time is 11:47 p.m. central European time and we are going off the record.

(TIME NOTED: 11:47 P.M. CENTRAL EUROPEAN TIME.)

____

DONALD C. STONE

Subscribed and sworn to before me this _____ day of _________, 2024

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ERRATA SHEET

VERITEXT LEGAL SOLUTIONS

330 OLD COUNTRY ROAD

MINEOLA, NEW YORK 11501

516-608-2400

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF DEPONENT:

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SUBSCRIBED AND SWORN TO BEFORE ME

THIS___DAY OF ____________, 20__.

_______________________ _______________________

(NOTARY PUBLIC) MY COMMISSION EXPIRES:

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, WILLIAM VISCONTI, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced by me to typewritten form and that the same is a true, correct, and complete transcript of said proceedings.

Before completion of the deposition, review of the transcript [X] was [ ] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not interested in the outcome of the action.

Witness my hand this 11th day of 2024.

____

WILLIAM VISCONTI

E X H I B I T S

E X H I B I T S

John Roberts, Esquire
jcroberts@millershah.com

November 11, 2024

RE: Laliberte, Mary Et Al v. Quanta Services Inc Et Al
11/1/2024, Donald C. Stone (#6983699)

The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at cs-midatlantic@veritext.com.

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

Laliberte, Mary Et Al v. Quanta Services Inc Et Al

Donald C. Stone (#6983699)

ACKNOWLEDGEMENT OF DEPONENT

I, Donald C. Stone, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

______________________________ ________________

Donald C. Stone Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

______ DAY OF ________________, 20___.

____

NOTARY PUBLIC

q

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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